TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1961

No. 604

HARRY CLIFFORD PORTER, PETITIONER

vs.

AETNA CASUALTY AND SURETY COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 18, 1961
CERTIORARI GRANTED DECEMBER 11, 1961

Supreme Court of the United States

OCTOBER TERM, 1961

No. 604

HARRY CLIFFORD PORTER, PETITIONER

vs.

AETNA CASUALTY AND SURETY COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

INDEX

[fol. A] [File endorsement omitted]

[fol. 1]

JOINT APPENDIX

Filed December 27, 1960

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 57-57

AETNA CASUALTY AND SURETY COMPANY, PLAINTIFF

v.

HARRY CLIFFORD PORTER, DEFENDANT

JUDGMENT—Filed February 8, 1960

This cause coming on for trial before the Court without a jury on November 18, 1959, and the Court having heard the testimony, examined the proofs offered by the respective parties, considered the arguments of counsel, and having made its Findings of Fact and Conclusions of Law, it is by the Court this 8th day of February, 1960

ADJUDGED, ORDERED AND DECREED that the plaintiff recover of the defendant the sum of $16,459.72, together with its costs herein.

/s/ Edward A. Tamm
JUDGE

IN UNITED STATES DISTRICT COURT

ATTACHMENT ON JUDGMENT—Filed March 1, 1960

The President of the United States, to the Marshal for said District—GREETING:

YOU ARE HEREBY COMMANDED to attach the goods, chattels, and credits of the defendant, if to be found in this

District, of value sufficient to satisfy the plaintiff judg-
[fol. 2] ment against the defendant in this Court in the above-entitled cause, on the 8th day of February, 1960, for $16,459.72 with interest from February 8, 1960, for money payable to the plaintiff by the defendant, and $40.00 for costs; and the same so attached, safely keep and have before said Court, on or before the tenth day occurring after the execution of this writ, that the same may be condemned unless sufficient cause be shown to the contrary; and, if said goods, chattels or credits be attached in the hands or possession of any person or persons other than the defendant, notify such person or persons of such seizure, and warn him or them to appear before said Court, within the time aforesaid, to show cause why the same should not be condemned and execution thereof had according to law, unless the credits so attached are wages as defined by Public Law 130, signed August 4, 1959, in which event the terms of the said Law must be observed. And have then there this writ, so endorsed as to show when and how you have executed it.

WITNESS, The Honorable Chief Judge of said Court the 24th day of February, 1960

HARRY M. HULL, Clerk

By /s/ Robert C. Huey
Deputy Clerk

[SEAL]

NOTICE—February 24, 1960

To: Columbia Federal Building Association
730 - 11th St., N.W., Washington, D. C., Garnishee

YOU ARE HEREBY NOTIFIED that any property or credits of Harry Clifford Porter, ~~or his Committee, Ethelbert B. Frey, Esq.~~ /s/ JLL in your hands are seized by virtue of the foregoing writ of attachment, and you are hereby warned to appear in said Court, on or before the tenth day after service hereof, and show cause, if any there be, why the property or credits so attached should not

be condemned and execution thereof had, unless the credits hereby attached are wages as defined by Public Law 130, signed August 4, 1959, in which event you are admonished [fol. 3] to comply with the terms of that Law. A copy of the referred to Law may be obtained from the Clerk of this Court upon request.

U.S. Marshal.

MARSHAL'S RETURN

Attached credits in the hands of J. Anderson and served with copies of this Writ, Interrogatories, and Notices as Garnishee of Defendant
Laskey & Laskey

by /s/ John L. Laskey
Plaintiff's Attorney

U.S. Marshal in and for the
District of Columbia

IN UNITED STATES DISTRICT COURT

ATTACHMENT ON JUDGMENT

The President of the United States, to the Marshal for said District—GREETING:

YOU ARE HEREBY COMMANDED to attach the goods, chattels, and credits of the defendant, if to be found in this District, of value sufficient to satisfy the plaintiff judgment against the defendant in this Court in the above-entitled cause, on the 8th day of February, 1960, for $16,459.72 with interest from February 9, 1960, for money payable to the plaintiff by the defendant, and $40.00 for costs; and the same so attached, safely keep and have before said Court, on or before the tenth day occurring after the execution of this writ, that the same may be condemned unless sufficient cause be shown to the con-

trary; and, if said goods, chattels, or credits be attached in the hands or possession of any person or persons other than the defendant, notify such person or persons of such seizure, and warn him or them to appear before said Court, within the time aforesaid, to show cause why [fol. 4] the same should not be condemned and execution thereof had according to law, unless the credits so attached are wages as defined by Public Law 130, signed August 4, 1959, in which event the terms of the said Law must be observed. And have then there this writ, so endorsed as to show when and how you have executed it.

WITNESS, The Honorable Chief Judge of said Court the 24th day of Feb., 1960

HARRY M. HULL, Clerk

By /s/ Robert C. Huey
Deputy Clerk.

NOTICE—February 24, 1960

To Ethelbert B. Frey, Esq., Committee of Harry Clifford Porter, 1319 F St., N.W., Washington, D. C., Garnishee

YOU ARE HEREBY NOTIFIED that any property or credits of Harry Clifford Porter in your hands are seized by virtue of the foregoing writ of attachment, and you are hereby warned to appear in said Court, on or before the tenth day after service hereof, and show cause, if any there by, why the property or credits so attached should not be condemned and execution thereof had, unless the credits hereby attached are wages as defined by Public Law 130, signed August 4, 1959, in which event you are admonished to comply with the terms of that Law. A copy of the referred to Law may be obtained from the Clerk of this Court upon request.

U. S. Marshal

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[fol. 5]

IN UNITED STATES DISTRICT COURT

ATTACHMENT ON JUDGMENT—Filed March 1, 1960

The President of the United States, to the Marshal for said District—GREETING:

YOU ARE HEREBY COMMANDED to attach the goods, chattels, and credits of the defendant, if to be found in this District, of value sufficient to satisfy the plaintiff judgment against the defendant in this Court in the above-entitled cause, on the 8th day of February, 1960, for $16,459.72 with interest from February 9, 1960 for money payable to the plaintiff by the defendant, and $40.00 for costs; and the same so attached, safely keep and have before said Court, on or before the tenth day occurring after the execution of this writ, that the same may be condemned unless sufficient cause be shown to the contrary; and, if said goods, chattels, or credits be attached in the hands or possession of any person or persons other than the defendant, notify such person or persons of such seizure, and warn him or them to appear before said Court, within the time aforesaid, to show cause why the same should not be condemned and execution thereof had according to law, unless the credits so attached are wages as defined by Public Law 130, signed August 4, 1959, in which event the terms of the said Law must be observed. And have then there this writ, so endorsed as to show when and how you have executed it.

WITNESS, The Honorable Chief Judge of said Court the 24th day of Feb., 1960

HARRY M. HULL, Clerk

By /s/ Robert C. Huey
Deputy Clerk.

NOTICE—February 24, 1960

To Prudential Building Association
1308 G St., N. W., Washington, D. C., Garnishee

YOU ARE HEREBY NOTIFIED that any property or credits [fol. 6] of Harry Clifford Porter, ~~or his Committee, Ethelbert B. Frey, Esq.~~ /s/ JLL in your hands are seized by virtue of the foregoing writ of attachment, and you are hereby warned to appear in said Court, on or before the tenth day after service hereof, and show cause, if any there by, why the property or credits so attached should not be condemned and execution thereof had, unless the credits hereby attached are wages as defined by Public Law 130, signed August 4, 1959, in which event you are admonished to comply with the terms of that Law. A copy of the referred to Law may be obtained from the Clerk of this Court upon request.

U. S. Marshal

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IN UNITED STATES DISTRICT COURT

INTERROGATORIES IN ATTACHMENT ~~Notice~~ Notice—Filed March 1, 1960

To Columbia Federal Building Association
730 - 11th St., N. W., Washington, D. C., Garnishee

You are required to answer the following interrogatories, *under Penalties of Perjury* within ten days after service hereof. And should you neglect or refuse so to do, judgment may be entered against you for an amount sufficient to pay the plaintiff's claim, with interest and costs of suit.

LASKEY and LASKEY

By /s/ John L. Laskey
Attorney for Plaintiff

INTERROGATORIES

1st. Were you at the time of the service of the writ of attachment, served herewith, or have you been, between the time of such service and the filing of your answer to this interrogatory, indebted to the defendants?[1] If so, [fol. 7] how, and in what amount?

ANSWER: Not to defendant individually, but see Interrogatory answers "2nd" and "3rd" below and Thermofax attachments.

2nd. Had you, at the time of the service of the writ of attachment, served herewith, or have you had, between the time of such service and the filing of your answer to this interrogatory, any goods, chattels, or credits of the defendant[1] in your possession or charge? If so, what?

ANSWER: Savings Account-Ethelbert B. Frey, Comm. Est. Harry C. Porter, Account No. 31337

3rd. List the dates and amounts of each deposit by the defendant, or his committee, Ethelbert B. Frey, from the date of opening of the account or accounts, and especially the account associated with Book No. 31337. Account opened 5-11-55, amt. $3,000.00., 1-6-56 and 12-6-56 deposit of $1,000.00 each—Balance this date, 2-25-60, $5,791.20 incl. dividends.

I declare under the penalties of perjury that the answers to the above interrogatories are, to the best of my knowledge and belief, true and correct as to every material matter.

Signed this 25th day of February, A.D. 1960

Columbia Federal Savings and Loan Association

/s/ T. W. Blumenaner, Jr., Senior Vice President

[1] Or to the defendant's Committee, Ethelbert B. Frey, Esq.

Account No. 31337

NAME Mr. Ethelbert B. Frey Committee for the Estate of Harry C. Porter

ADDRESS 1319 F Street, N. W., D. C.

Bonus Long

Bonus Short

Rate

Share Loan Amount

Date Loan Made

Monthly Pmt.

Date Loan Paid

Share Payments		Memo.	Repurchases		Date	Balance	
Div. Memo.	Amount		Div. Memo.	Amount		Div. Memo.	Amount
7.50	3,000 00				May 31'55	7.50	3,000 00
					Jun 30'55	45.11	3,007 50
					Dec 31'55	53.41	3,052 61
17.50	1,000.00				Jan 6'56	70 91	4,052 61
					Jun 30'56	72 15	4,123.52
2.92	1,000 00				Dec 6'56	75 07	5,123 52
	75.07				Dec 31'56	90.97	5,198 59
	90.97				Jun 28'57	92.56	5,289.56
	92.56				Dec 31'57	94 19	5,382 12
	94.19				Jun 30'58	95.83	5,476.31
	95.83				Dec 31'58	48.76	5,572 14
	48.76				Mar 31'59	56 20	5 620.90
	56.20				Jun 30'59	56.77	5,677 10
	56.77				Sep 30'59	57 33	5,733 87
	57.33				Dec 31'59	57.91	5,791 20

SIGNATURE _____

COLUMBIA FEDERAL SAVINGS AND LOAN ASSOCIATION
Washington, D. C.

FREY, Ethelbert B -Committee
INDIVIDUAL TRUST ACCOUNT - ADULT Account No. 31337

(1) Ethelbert B Frey Committee for Harry C Porter (Illegible)
(2) _____ Beneficiary
(To Be Typed)

I am an American citizen and
I hereby apply for a SAVINGS account in the
Columbia Federal Savings and Loan Association, Washington, D. C.
A specimen of my signature is shown below and the association is hereby authorized to act with out further inquiry in accordance with writings bearing such signature

Signature of Trustee /s/ Ethelbert B Frey
Street Address 1319 F Street, N W
City and State Washington, D C Telephone No. [redacted]
Committee
As Trustee For Harry C. Porter iciary
As specified in trust agreement on reverse side hereof.
Dated this 11th day of May 19 55

(over)

[fol. 9]

IN UNITED STATES DISTRICT COURT

INTERROGATORIES IN ATTACHMENT ~~NOTICE~~ Notice—Filed March 2, 1960

To Prudential Building Association
1308 G St., N. W., Washington, D. C., Garnishee:

You are required to answer the following interrogatories, *under Penalties of Perjury* within ten days after service hereof. And should you neglect or refuse so to do, judgment may be entered against you for an amount sufficient to pay the plaintiff's claim, with interest and costs of suit.

LASKEY and LASKEY

By /s/ John L. Laskey
Attorney for Plaintiff.

INTERROGATORIES

1st. Were you at the time of the service of the writ of attachment, served herewith, or have you been, between the time of such service and the filing of your answer to this interrogatory, indebted to the defendant?[1] If so, how, and in what amount?

ANSWER: Yes, we have a Savings account, No. 18215, in the name of Ethelbert G. Frey, Committee for Harry C. Porter in which the present balance is $3,078.63.

2nd. Had you, at the time of the service of the writ of attachment, served herewith, or have you had, between the time of such service and the filing of your answer to this interrogatory, any goods, chattels, or credits of the defendant[1] in your possession or charge? If so, what?

ANSWER: No, except as reported above.

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[1] Or to the defendant's Committee, Ethelbert B. Frey, Esq.

3rd. List the dates and amounts of each deposit by the defendant, or his Committee, Ethelbert B. Frey, Esq., from the date of opening of the account or accounts, and especially the account associated with Book No. 18215.

Above Account opened March 3, 1959 with deposit of $3,000.00. Dividends have been credited periodically and additional deposit of $2,000.00 was made on January 11, [fol. 10] 1960. One withdrawal was made of $2,000.00— on October 21, 1959.

I declare under the penalties of perjury that the answers to the above interrogatories are, to the best of my knowledge and belief, true and correct as to every material matter.

/s/ Richard N. Shanbarker

Signed this 1st day of March A.D. 1960.

/s/ Flora Hock

IN UNITED STATES DISTRICT COURT

INTERROGATORIES IN ATTACHMENT [redacted]—Filed March 2, 1960

To Ethelbert B. Frey, Esq., Committee of Harry Clifford Porter, 1319 F St., N.W., Washington, D. C., Garnishee

You are required to answer the following interrogatories, *under Penalties of Perjury* within ten days after service hereof. And should you neglect or refuse so to do, judgment may be entered against you for an amount sufficient to pay the plaintiff's claim, with interest and costs of suit.

LASKEY and LASKEY

By /s/ John L. Laskey
Attorney for Plaintiff

INTERROGATORIES

1st. Were you at the time of the service of the writ of attachment, served herewith, or have you been, between the time of such service and the filing of your answer to this interrogatory, indebted to the defendant? If so, how, and in what amount?

ANSWER: I am not personally indebted to the defendant, but as an officer of this Court, hold certain funds as answered in question two.

2nd. Had you, at the time of the service of the writ of attachment, served herewith, or have you had, between the time of such service and the filing of your answer to this interrogatory, any goods, chattels, or credits of the [fol. 11] defendant in your possession or charge? If so, what? Where Located?

ANSWER: As committee of the defendant and officer of the Court, I have on deposit in the First National Bank, 1313 G St., N.W., $2,266.61; a deposit in the Columbia Federal Building Association, 11th. St. N.W. of $5,791.20, and a deposit in the Prudential Bldg. Association, in the 1300 block of G St., N.W., $3,078.63, upon which are the following [liens]. One of $345.00, which is an over-payment of benefits from the Veterans Administration, which they ask to be returned to them, and an attorney's fee of $2000.00, due attorney for said Harry Clifford Porter.

I understand that under Public Law 86-146 recently enacted, that payments heretofore received by said Harry Clifford Porter, have been stopped, effective as of December 14, 1959, thus the request for the refund. (As per letters received by me from the Veterans Administration and dated February 15, 1960).

I declare under the penalties of perjury that the answers to the above interrogatories are, to the best of my knowledge and belief, true and correct as to every material matter.

Signed this 1st day of March A.D. 1960.

/s/ Ethelbert B. Frey,
Committee and Attorney

IN UNITED STATES DISTRICT COURT

MOTION TO QUASH ATTACHMENT ISSUED BY PLAINTIFF IN THE ABOVE ENTITLED CAUSE—Filed March 1, 1960

Now comes Ethelbert B. Frey, committee and attorney for the said Harry Clifford Porter, defendant, who is a patient at Saint Elizabeths Hospital, Washington, D. C., and moves this Honorable Court to quash the writ of attachment filed herein on the judgment obtained in the above-entitled cause and issued against him as committee of Harry Clifford Porter for the following reasons:

First: That the committee has no control over the funds, whatsoever, as he is only the agent and representative of [fol. 12] this Honorable Court, who has control and custody of the funds of the said Harry Clifford Porter, an ex-service man, to whom money was paid and received by him for his disability connected with his military service, and as such, said funds cannot be attached by the plaintiff or anyone else.

Second: That under the Act of Congress in 1935 and setforth clearly in the United States Code, article 38-3101, page 135 and section 454 A, the benefits received by a veteran are unattachable.

WHEREFORE, having fully setforth the facts and laws in the matter, attached hereto and made part hereof, committee and attorney for said patient, Harry Clifford Porter, patient being in Saint Elizabeths Hospital, asks this Honorable Court to quash the attachment filed herein.

And for such other and further relief as to this Honorable Court may seem fit and proper.

/s/ Ethelbert B. Frey,

Committee and Attorney for
Harry Clifford Porter, patient

• • • •

[Filed March 11, 1960]

EXHIBIT A TO OPPOSITION OF PLAINTIFF TO MOTION TO QUASH ATTACHMENT

[Filed Feb. 8, 1960] Ex. A.

Report Under Rule 22
United States District Court for the District of Columbia

In Re: Harry Clifford Porter
(Patient)

Mental Health No. 1714-52

ANNUAL REPORT UNDER RULE 22

(See copy of paragraph (a) of Rule, on back of this form)

The report of Ethelbert B. Frey, Committee, who qualified as committee on the 22nd. day of December, 1952, respectfully shows that the estate consists of the following:

REAL ESTATE

Location and Description	Value
None	

[fol. 13]

BANK DEPOSITS AND OTHER MONEY

Total, $.....

Account No.	Amount	Deposited in—	In name of—
Jan. 30, 1960, have on deposit with Col. Federal Bldg. Asso. Book #31337,	$5,791.20	Columbia Federal Bldg. Association 730 - 11th. St., N.W.	Ethelbert B. Frey, Committee
Jan. 30, 1960, have on deposit with Prudential Bldg. Asso. Book #18215	$3,078.63	Prudential Bldg. Asso. 1308 G St., N.W.	Ethelbert B. Frey, Committee
Jan. 30, 1960, have on deposit; First Nat. Bk.	2,041.61	First Nat. Bk. formerly 2nd. 1313 G St., N.W.	Ethelbert B. Frey, Committee

• • • •

The following is a statement (for the preceding year) of all sales, transfers or other disposition of assets; and of investments and changes in form of assets, and the name in which each stands:

Invested $3000.00 of patient's money in the Prudential Bldg. and Loan Association, 1338 G St., N.W.; Total there now of $3078.63.

The penalty of my undertaking is at present $11,500.00
The original bond was filed on the 2nd. day of January, 1953, for $1000.00
The surety is Royal Indemnity Co. and amount of bond at present is %11,500.
When the first undertaking was filed, the value of the estate was $500.00.

I/We *Ethelbert B. Frey, Committee,* ~~do~~ swear that I/we have read the foregoing report signed by me/us and know the contents thereof, and that the facts therein stated are true.

/s/ Ethelbert B. Frey, Committee
Full address: 1319 F Street, N.W.

Subscribed and sworn to before me this 8th day of February, 1960.

HARRY M. HULL, Clerk

By: Robert C. Huey
Deputy Clerk

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[fol. 14]

Seventh Account of Ethelbert B. Frey, Committee,

For period beginning January 30, 1959, and ending January 30, 1960

1959		Receipts	Disbursements
Jan. 30/59	Balance cash on hand in First National Bank formerly 2nd Nat. Bk. at 1313 G St. N.W. Washington, D. C.	$3261.52	
1959	(Deposits since above date)		
Feb. 2,	Disability check for patient from United States government	225.00	
March 2,	Disability check for patient from United States government	225.00	
April 1,	Disability check for patient from United States government	225.00	
May 4,	Disability check for patient from United States government	225.00	
June 3,	Disability check for patient from United States government	225.00	
July 8,	Disability check for patient from United States government	225.00	
August 3,	Disability check for patient from United States government	225.00	
Sept. 4,	Disability check for patient from United States government	225.00	
October 5,	Disability check for patient from United States government	225.00	
Oct. 21,	Deposited check heretofore drawn from the account of Prudential Bldg. Asso. for emergency purposes to Drs. Perritti and Teplin, who were psychiatrists in the criminal case #1308-52 & civil action #57-57. These doctors were finally located in California & Wisconsin; but did not use	2000.00	
October 29	Received check from Saint Elizabeths after Porter was sent to D.C. jail for trials, there was balance in his account at that time....	187.31	
	Amounts carried forward	$7473.83	

[fol. 15]

		Receipts	Disbursements
	Brought forward	$7473.83	
Nov. 3	Deposited disability check for patient from United States government	225.00	
Dec. 3,	Deposited disability check for patient from United States government	225.00	
1960			
Jan. 4,	Deposited disability check for patient from United States government	225.00	
(1959)	(Disbursements)		
Feb. 19,	Ck. #144, Fred J. Eden, auditor		$ 40.00
Feb. 19,	Ck. #145, Ethelber B. Frey, committee		73.70
March 2,	Ck. #146, Jones, T.V. repair		27.70
March 3,	Ck. #147, as per order of court, deposited in Prudential Bldg. Asso., 1338 G St. N.W.		$3000.00
Mar. 11,	Ck. #148, Adkins & Aniley, premium on bond		40.00
Apr. 23,	Ck. #149, National Shirt Shop, for Porter, as per letter		10.22
Apr. 23,	Ck. #150, Ralph S. Anthony Co., as per letter of April 18,		42.50
Apr. 27,	Ck. #151, to superintendent of Saint Elizabeths Hospital		100.00
May 11,	Ck. #152, Further premium on bond		10.00
June 2,	Ck. #153, Electric razor		15.00
June 2,	Ck. #154, For adding machine		60.00
July 23,	Ck. #155, Saint Elizabeths Hospital for necessities,		200.00
Oct. 5,	Ck. #156, Adkins & Aniley, premium from the bond		12.50
Oct. 15,	Ck. #157, E. B. Frey, committee, expenses in pending trials,		50.00
	Amounts carried forward	$8148.83	$3671.62

[fol. 16]

		Receipts	Disbursements
	Brought forward,	$8148.83	$3671.62
Oct. 19,	Ck. #158, For hauling Porter's things from hospital, when sent to District jail,		6.00
Oct. 22,	Ck. #159, Copland, Court Stenographer for record,		5.00
Oct. 28,	Ck. #160, Davis, Court stenographer		8.45
Oct. 28	Ck. #161, E. B. Frey, for expenses as per order of court last year, explained (separate sheet)		100.00
Nov. 4,	Ck. #162, Dr. Pearlman for eye glasses		30.00
Nov. 4,	Ck. #163, Adkins & Anniley for premium, bond.		10.00
Nov. 16,	Ck. #164 Repair Porter's watch		7.00
Nov. 17,	Ck. 165, Bill's T.V. (Repair Porter's T.V.		12.00
Dec. 15,	Ck. #166, O'Neil, court reporter,		27.30
Dec. 16,	Ck. #167, Superintendent Saint Elizabeths Hospital, after his return there,		100.00
Dec. 17,	Ck. #168, National Shirt Shop		19.85
Dec. 18,	Ck. #169, as per letter, Xmas presents, (Champayne and Whiskey)		50.00
Dec. 18,	Ck. #170, Cash for additional expenses, etc. as per order of court, separate sheet in detail,		50.00
1960.			
Jan. 11,	Ck. #171, Return of money heretofore drawn as explained, to Prudential Bldg. & Loan Asso.		$2000.00
	Total receipts and cash on hand at beginning of year	$8148.83	$6107.22
	Amounts carried forward	$8148.83	$6107.22

[fol. 17]

		Receipts	Disbursements
	Brought forward	$8148.83	$6107.22
	Disbursements during year,	6107.22	
1960			
Jan. 30,	Balance cash on hand in First National Bank formerly 2nd. Nat. Bank, 1313 G St., N.W.	$2041.61	
Jan. 1959,	Cash of monies in bank at beginning of year,	$3261.52	
	Deposits of monies received during yr. 1959,	4887.31	
Jan. 30/60	Plus deposit in Columbia Federal Bldg. Asso.	5791.20	
Jan. 30/60	Plus deposit in Prudential Bldg. Asso.	3078.63	
1959			
	Money spent as per checks and receipts		$6107.22
Jan. 30/60	Cash on deposit, Columbia Federal Bldg Asso.		5791.20
Jan. 30/60	Cash on deposit, Prudential Bldg. Asso.		3078.63
Jan. 30/60	Bal. cash on deposit at First National Bank (1313 G St., N.W.)		2041.61
		$17,018.66	$17,018.66
	Committee requests 5% on the amount of $1107.22, which is amt. above Bldg. & Loan Deposits		

District of Columbia, to wit:

I/we the undersigned, Ethelbert B. Frey, Committee, do solemnly swear that the foregoing account is just and true, and that I have bona fide paid, or secured to be paid, the several sums for which I claim credit and allowance.

/s/ Ethelbert B. Frey, Committee

Sworn to and subscribed before me this 8th day of February, A.D. 1960.

HARRY M. HULL, Clerk

By /s/ Robert C. Huey
Deputy Clerk

[fol. 18]

IN UNITED STATES DISTRICT COURT

MOTION FOR JUDGMENT OF CONDEMNATION AGAINST CREDITS IN THE HANDS OF ETHELBERT B. FREY, COMMITTEE—
Filed March 17, 1960

The plaintiff by and through its attorneys moves the Court for an order for judgment of condemnation against the credits of the defendant, Harry Clifford Porter, in the hands of Ethelbert B. Frey, Committee, in an account in the name of Ethelbert B. Frey, Committee for Harry Clifford Porter, in the amount of $11,136.44, as admitted by the answer of said Committee, filed herein on March 1, 1960, subject to the claim of said Committee in his answers to interrogatories that the following items constitute liens upon the fund:

1. Claim by the Veterans' Administration for $345 in overpayment of benefits.
2. An attorney's fee of $2,000 due the attorney for Harry Clifford Porter.

A motion for judgment of condemnation against the credits of the defendant in the hands of four garnishees has been filed. The total amount attached is $11,136.44. A motion to quash the attachment levied against the Committee has been filed. An opposition to the motion has been filed by the plaintiff. Plaintiff requests that the motion to quash and the four motions for judgment of condemnation be consolidated for hearing.

LASKEY and LASKEY

By /s/ John L. Laskey
/s/ Dyer Justice Taylor

• • • •

IN UNITED STATES DISTRICT COURT

MOTION FOR JUDGMENT OF CONDEMNATION AGAINST CREDITS IN THE HANDS OF PRUDENTIAL BUILDING ASSOCIATION—
Filed March 17, 1960

The plaintiff by and through its attorneys moves the Court for an order for judgment of condemnation against [fol. 19] the credits of the defendant, Harry Clifford Porter, in the hands of Prudential Building Association, garnishee, in an account in the name of Ethelbert B. Frey, Committee for Harry Clifford Porter, in the amount of $3,078.63, as admitted by the answer of said garnishee, filed herein on March 1, 1960, subject to the claim of the Committee, Ethelbert B. Frey in his answers to interrogatories that the following items constitute liens upon the fund:

1. Claim by the Veterans' Administration for $345 in overpayment of benefits.
2. An attorney's fee of $2,000 due the attorney for Harry Clifford Porter.

A motion for judgment of condemnation against the credits of the defendant in the hands of four garnishees

has been filed. The total amount attached is $11,136.44. A motion to quash the attachment levied against the Committee has been filed. An opposition to the motion has been filed by the plaintiff. Plaintiff requests that the motion to quash and the four motions for judgment of condemnation be consolidated for hearing.

LASKEY and LASKEY

By /s/ John L. Laskey
/s/ Dyer Justice Taylor

• • • •

IN UNITED STATES DISTRICT COURT

MOTION FOR JUDGMENT OF CONDEMNATION AGAINST CREDITS IN THE HANDS OF COLUMBIA FEDERAL SAVINGS & LOAN ASSOCIATION—Filed March 17, 1960

The plaintiff by and through its attorneys moves the Court for an order for judgment of condemnation against the credits of the defendant, Harry Clifford Porter, in the hands of Columbia Federal Savings & Loan Association, garnishee, in an account in the name of Ethelbert B. Frey, Committee, Estate of Harry C. Porter, in the amount of $5,791.20, as admitted by the answer of said garnishee, filed herein on March 1, 1960, subject to the claim of the Committee, Ethelbert B. Frey in his answers [fol. 20] to interrogatories that the following items constitute liens upon the fund:

1. Claim by the Veterans' Administration for $345 in overpayment of benefits.
2. An attorney's fee of $2,000 due the attorney for Harry Clifford Porter.

A motion for judgment of condemnation against the credits of the defendant in the hands of four garnishees has been filed. The total amount attached is $11,136.44. A motion to quash the attachment levied against the

Committee has been filed. An opposition to the motion has been filed by the plaintiff. Plaintiff requests that the motion to quash and the four motions for judgment of condemnation be consolidated for hearing.

LASKEY and LASKEY

By /s/ John L. Laskey
/s/ Dyer Justice Taylor

• • • •

IN UNITED STATES DISTRICT COURT

EXHIBIT A—Filed July 14, 1960

Law Offices of
LASKEY and LASKEY
Albee Building, 1426 G Street, N.W.
Washington, D. C.
Zone 5

June 7, 1960

The Honorable Luther W. Youngdahl
United States Courthouse
Constitution Ave. & John Marshall Place
Washington, D. C.

Re: Aetna v. Porter
C. A. No. 57-57

Dear Judge Youngdahl:

The purpose of this letter is to transmit additional information which we request that you consider in acting upon our motions for judgment of condemnation in the above-entitled case.

[fol. 21] One of the savings and loan associations against whom we have moved for a judgment of condemnation is

the Columbia Federal Savings and Loan Association, 730 11th Street, N. W. The enclosed material consisting of a letter and pamphlet from the Association, was unsolicited and apparently sent to all members of the legal profession of the District of Columbia. The material is self-explanatory and indicates that the Association considers that money placed with its Association is an "investment." It is our position, as set forth in our memorandum of points and authorities, that "investments" of veterans' benefits are not exempt from attachment.

Very truly yours,

LASKEY and LASKEY

By /s/ John L. Laskey
/s/ Dyer Justice Taylor

DJT/df
Encl.
cc: E. B. Frey, Esq.

EXHIBIT B—Filed July 14, 1960

COLUMBIA FEDERAL SAVINGS
AND LOAN ASSOCIATION
730 ELEVENTH STREET, N.W.
WASHINGTON 1, D.C.

May 27, 1960

Mr. Dyer J. Taylor
Albee Building
Washington 5, D. C.

Dear Mr. Taylor:

The local District Court rules relating to the investment of trust funds were amended on March 2, 1960 to permit investments up to $10,000 each in twenty-four local insured savings and loan associations, or a total investment of $240,000 for any one fiduciary account.

Rule 23, as amended by striking out a now discarded $20,000 limitation, reads:

[fol. 22] "Federal Savings and Loal Associations, Building and Loan Associations, and Savings and Loan Associations. Investment shares, certificates and deposit accounts in said institutions not exceeding $10,000.00 in one institution, provided such institution is located and doing business in the District of Columbia and its accounts are insured by the Federal Savings and Loan Insurance Corporation under the provisions of Subchapter IV, Title 12 of the United States Code."

Columbia Federal Savings and Loan Association, with its four conveniently located offices, qualifies under the rule. Its current dividend rate is 4% per annum, compounded quarterly. Accounts may be opened and maintained by mail.

We hope you will place the enclosed folder, which contains all the forms necessary to open an account with us, in your files. A limited number of these folders is available should you wish another for an associate in your office.

We would welcome an opportunity to serve you.

Sincerely yours,

/s/ Joseph P. Burke, Jr.

Joseph P. Burke, Jr.
Vice President

[fol. 23] EXHIBIT C

✓ Exhibit C

23

Who May Have Accounts

Accounts may be held by the following:

One person alone

Two persons, payable to either or survivor

One person, as trustee for another

Two persons, as joint trustees for another

One person, with power of attorney granted to another

A guardian or trustee, either a person or a corporation, for a minor or incompetent

An executor or administrator

A corporation

A club, society, lodge, or association

A partnership

A credit union

We have a savings account for every purse and purpose.

YOU'LL LIKE THE FRIENDLY SERVICE YOU GET HERE

You're always a welcome visitor here. We want you to use these friendly quarters for every service we can render. Drop in whenever it's convenient and meet the neighborly people in our savings department. Or, if it's home financing advice you require, you'll find our mortgage loan advisers ready to talk over your problems in the light of present-day conditions. We've been your neighbors for a long time, and we'd like to know you even better!

A FEDERAL SAVINGS AND LOAN ASSOCIATION

offering

An Insured Investment

for

ADMINISTRATORS

EXECUTORS

FIDUCIARIES

Columbia Federal Savings

AND LOAN ASSOCIATION

740 ELEVENTH STREET, N. W.
1726 PENNSYLVANIA AVENUE, N. W.
5301 WISCONSIN AVENUE, N. W.
2826 ALABAMA AVENUE, S. E.
REpublic 7-7111

SAFEGUARDING YOUR SAVINGS

Safety of Savings Assured

(1) Our investments are limited by law to loans secured by first liens on real estate (almost all on homes and repayable monthly with a monthly reduction in the balance owed); to securities of the United States Government; to home improvement loans; and to stock in the Federal Home Loan Bank. (2) By Act of Congress, each member's account is permanently insured against loss up to $10,000 by the Federal Savings and Loan Insurance Corporation, an agency of the United States Government. Columbia Federal is Washington's First Insured Savings Association.

Earnings on Accounts

From interest earned by investments, and from interest paid by borrowers, the association pays expenses, sets aside reserves and distributes the net earnings quarterly to savers. Earnings are computed on a monthly basis—all funds received up to the tenth of any month earn from the first of that month if left to the end of the quarterly earnings period. Earnings may be credited to your account or paid by check, as you direct. Columbia Federal has never missed making a dividend payment since its founding in 1907. Our careful, conservative management has consistently maintained a policy of adding substantially to reserves—thus further assuring the stability of this Association.

No Fluctuation or Risk

Accounts here are non-assessable, and are always worth 100 cents on the dollar. There are no charges or fees made to establish or close your account at Columbia Federal.

Flexibility

Our savings plan is extremely flexible—accounts may be opened in any amounts and added to with any amount at any time. Additions and withdrawals are entered in a passbook, which you receive when you open your savings account here. Liberal earnings on your savings account are credited and compounded four times each year.

Withdrawal Privileges

To meet cash needs, we maintain substantial demand deposits in commercial banks and investments in readily-convertible United States Government Securities. A steady inflow of funds results from monthly payments on mortgage loans. To this is added a line of credit fixed for each association by the Federal Home Loan Bank of the association's district, with 50% of savings as the maximum. Since organization, it has been our policy and practice to pay withdrawals promptly on demand.

[fol. 25]

IN UNITED STATES DISTRICT COURT

MEMORANDUM OPINION—July 14, 1960

Plaintiff has a judgment against the defendant in the amount of $16,459.72 and has issued attachments and moved for judgment of condemnation as to the following bank accounts which are in the name of the defendant's committee, Ethelbert B. Frey:

Prudential Building Association	$3,078.63
Columbia Federal Building Association	5,791.20
First National Bank	2,266.61

The two building association accounts draw interest; the First National account is a checking account and draws no interest.

Defendant's committee asserts that these accounts result from the payment of veteran's benefits; 38 U.S.C. § 3101 disallows execution on such benefits; and therefore defendant's motion to quash the attachments must be granted and plaintiff's motion for judgment of condemnation denied.

38 U.S.C. § 3101 reads, in pertinent part:

> "(a) Payments of benefits due or to become due under any law administered by the Veterans' Administration shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to claims of the United States arising under such laws nor shall the exemption therein contained as to taxation extend to any property purchased in part or wholly out of such payments. • • • "

The question presented by this case is whether the exemption applies to these accounts or, whether the ac-

counts are "property purchased in part or wholly out of such payments", rendering the exemption unavail- [fol. 26] able.[1]

In *Trotter* v. *Tennessee*, 290 U.S. 354 (1933), the Supreme Court held that lands purchased with veterans' benefit payments were subject to taxation, the benefits having lost their exempt status when they were "converted into land and buildings". (290 U.S. at 356).

In *Lawrence* v. *Shaw*, 300 U.S. 245 (1937), the Court held that the deposit of veterans' benefits in a bank did not thereby render the funds non-exempt.

> "These payments are intended primarily for the maintenance and support of the veteran. To that end neither he nor his guardian is obliged to keep the moneys on his person or under his roof." (300 U.S. at 250)

Accordingly, it has been held in this Circuit that a checking account is exempt. *Williams* v. *United States Fidelity & Guaranty Co.*, 71 App. D.C. 9, 107 F.2d 210 (1939). Is a savings account in a building association exempt?

In *Carrier* v. *Bryant*, 306 U.S. 545 (1939), the Supreme Court was asked to decide whether negotiable notes and United States bonds purchased with veteran's benefits by a veteran's guardian were exempt from execution on a judgment against the veteran.[2] The Court held the prop-

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[1] Plaintiff has also contended that the moneys in First National are commingled exempt and non-exempt funds. Whether the plaintiff will contend, after considering this opinion, that any of the funds are not exempt is unclear from the record. In any event, the identity of the funds can be ascertained from the committee's records and so, commingling, if it did occur—and it is not clear from the record that there were deposits of non-exempt funds, the $2,000 transfer from Prudential clearly being exempt—would not serve to make the *entire* account amenable to execution. *Appanoose County* v. *Henke*, 207 Iowa 835, 223 N.W. 876 (1929); cf. *Pentz* v. *First National Bank*, 75 Pa. S.Ct. 1 (1920). Only those funds not given immunity by § 3101 would be subject to execution. The motions now before the Court shall be disposed of without prejudice to a future determination, if counsel cannot agree, as to the true nature of the First National Account.

[2] The statute there involved was §3 of the Act of August 12, 1935, c. 510, 49 Stat. 607, 609 which was not significantly different from 38 U.S.C. § 3101.

[fol. 27] erty subject to execution, quoting from the *Lawrence* case to the effect that

> "'The provision of the Act of 1935 that the exemption should not apply to property purchased out of the moneys received from the Government shows the intent to deny exemption to *investments*, as was ruled in the Trotter case.'" (306 U.S. at 550, quoting from 300 U.S. at 250) (emphasis supplied).

The plaintiff has seized upon this word "investment", pointed to Local Rule 23-II-a[3] and concluded that the defendant's funds are "investments" and therefore not exempt under 38 U.S.C. § 3101.

But as Mr. Justice Holmes has instructed us:

> "A word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used." *Towne* v. *Eisner*, 245 U.S. 418, 425 (1918)

And see *International Stevedoring Co.* v. *Haverty*, 272 U.S. 50 (1926). Because our Local Rules speak of a deposit in a savings and loan association or a building association as an "investment" does not necessarily mean it is an "investment" in *Lawrence* v. *Shaw* terms and thus unexempt under 38 U.S.C. § 3101. The inquiry, it seems to the Court, must go further. *In re Bowen*, 141 Ohio St. 602, 49 N.E. 2d 753 (1943), urged by the plaintiff, is therefore not persuasive.

[fol. 28] Section 3101 does not speak of "investment". The statute speaks of "any property purchased in part or wholly out of such payments". When Mr. Chief Justice

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[3] "Investment of trust funds, unless otherwise provided in the instrument creating the trust, or except under extraordinary conditions set forth fully to the Court, will ordinarily be sanctioned only when made in the obligations meeting the following requirements:

* * * *

Section II-a. FEDERAL SAVINGS AND LOAN ASSOCIATIONS, BUILDING AND LOAN ASSOCIATIONS, AND SAVINGS AND LOAN ASSOCIATIONS. Investment shares, certificates and deposit accounts in said institutions not exceeding $10,000 in one institution, * * *."

Hughes used the word "investment" in *Lawrence* v. *Shaw*, quoted above, he was referring to the *Trotter* case. The only sentence in *Trotter* in which the word "investment" appears is the following:

> "We see no token of a purpose to extend a like immunity to permanent investments or the fruits of business enterprises." (290 U.S. at 357).

Reading the word "investment" in the light of this statement is quite revealing: an immunity was not to extend to *permanent* investments. As further clarification, the Court said:

> "• • • we think it very clear that there was an end to the exemption when they *lost the quality of moneys* and were *converted* into land and buildings." (290 U.S. at 356) (emphasis supplied)

Moneys deposited in a building association by the committee of a veteran have not "lost the quality of moneys", they have not been "converted" into "property".[4]

Indeed, in *Lawrence,* bank deposits were held exempt from taxation and after stating that it would be possible "under a special agreement" for deposits to "assume the character of investments", the Court carefully pointed out "we do not suggest that a mere allowance of interest upon deposits would be enough to destroy an immunity [fol. 29] where it would otherwise attach." The important factor would appear to be not an overly legalistic conception of the nature of the bank accounts, but rather the ease with which "the proceeds of the collection are subject to draft upon demand for the veteran's use." (300 U.S. at 250). As a practical matter, a withdrawal from

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[4] That a depositor in a savings and loan or building association may conceptually purchase "shares" in the association and thus be an "owner" rather than a creditor-depositor of the association is a matter of form, which, in the opinion of the Court, should have no bearing on the resolution of the problem here involved—just as the probability that a depositor in a checking account will not receive on demand the specific money deposited, but rather an equal sum of money in like kind, afforded no difficulty to the Court in *Williams,* supra. And see *Elbert Sales Co.* v. *Granite City Bank,* 192 S.E. 66 (1937).

a savings account can be accomplished as quickly as a withdrawal from a checking account—and this is true whether the savings account is in a savings bank, savings and loan, or building association. A checking account is immune; a savings account, likewise, should be. Furthermore, the Congressional purpose to immunize veterans' benefits would indicate that a liberal construction should be given the statutory grant of immunity. See *Mixon* v. *Mixon,* 203 N.C. 566, 166 S.E. 516 (1932); *Yake* v. *Yake,* 170 Md. 75, 183 A. 555 (1936); cf. *Hoeppel* v. *Westover,* 79 F.Supp. 794 (D.C. Cal. 1948).

The plaintiff's motions will be denied with the exception that the amounts in the building association accounts representing interest, $78.63 in Prudential and $791.20 in Columbia, and the amounts in the First National attributable to non-exempt funds, if any, shall be condemned. The defendant's motion to quash the attachments is granted with the above limitations.

Counsel to submit order reflecting the above.

/s/ Luther W. Youngdahl
Judge

July 14, 1960

IN UNITED STATES DISTRICT COURT

ORDER—September 13, 1960

The above cause came up for a hearing at this term of Court on an attachment, a motion to quash, and a motion for Condemnation.

That thereafter and after a hearing was had in open court by the attorneys of the respective parties on all three motions—

This court took the matter under consideration and from his opinion filed on July 14th., 1960 finds—

[fol. 30] That the motion to quash the attachment be granted, with the exception of interest accrued on deposit

with Columbia Building Association account to the amount of seven hundred ninety-one dollars and twenty cents, ($791.21) and interest on deposit in the Prudential Building Association in the amount of seventy-eight dollars and sixty-three cents, ($78.63) and any amount in the First National Bank attributable to non-exempt funds.

From information received by the court, there are no funds at present in the First National Bank,

THEREFORE, It is ordered this 13 day of Sept., 1960, that the motion to quash the attachment be granted and that the committee and attorney for the defendant, Harry Clifford Porter, is to turn over to the plaintiff, through his attorney of record, John Laskey, the total sum of eight hundred sixty-nine dollars and eight-three cents, ($869.83).

It is ordered that the motion to quash the attachment is hereby granted with the above stipulation.

It is further ordered that the plaintiff may file as its exhibits herein, rules, regulations and withdrawal requirements of the garnishees, Columbia Building Association and Prudential Building Association.

/s/ Luther W. Youngdahl
Judge

/s/ Ethelbert B. Frey

Seen: John L. Laskey

A certified copy of this Order will be delivered to the Columbia Building Association, the Prudential Building Association and the First National Bank.

/s/ Luther W. Youngdahl
Judge

IN UNITED STATES DISTRICT COURT

EXHIBITS FILED PURSUANT TO COURT ORDER OF SEPTEMBER 13, 1960—Filed November 1, 1960

31

[Columbia Federal Savings & Loan Association]

SAVINGS ACCOUNT

No.

This Certifies that

holds a Savings Account representing share interests in Columbia Federal Savings and Loan Association, subject to its charter and bylaws, the Rules and Regulations for the Federal Savings and Loan System, and to the laws of the United States of America.

COLUMBIA FEDERAL SAVINGS AND LOAN ASSOCIATION

INSURED PROTECTION
for Your Savings

Safety of your Savings Account in Columbia Federal Savings is automatically insured up to $10,000 by the FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, Washington, D. C., an instrumentality of the United States Government, created by Act of Congress, June 27, 1934.

The individual Savings Account of each member is insured up to $10,000. Joint accounts and trustee accounts are similarly protected. A husband and wife can each have an account insured up to $10,000 and a joint account insured up to $10,000; thus a total of $30,000 is insured.

SAVE AND BORROW WITH CONFIDENCE
IN
COLUMBIA FEDERAL SAVINGS

IMPORTANT

This book must be presented with every transaction.

Remittances may be made through the mail, by check or money order. All items credited in this book are subject to collection and final payment in cash.

Members should notify the Association of any change of address.

A Savings Account is provided for persons desiring to save a part of their regular income for future use. We suggest that a regular payment be made each month, although that is not required. Systematic Saving is the way to become successful and financially independent.

Dividends are declared and paid by the Association on June 30th and December 31st of each year. Dividends on Savings Accounts are computed on a monthly basis, and are compounded and added to each account semi-annually; earnings being allowed on each payment from the first of each month when made on or before the tenth of such month. Dividends are not allowed on withdrawals made between dividend dates.

COLUMBIA FEDERAL SAVINGS
AND LOAN ASSOCIATION
WASHINGTON, D. C.

Washington's First Insured Savings Association

TRANSFER OF ACCOUNT

For value received the undersigned hereby sells, assigns and transfers to

.....

the account represented by the within certificate of

COLUMBIA FEDERAL SAVINGS AND LOAN ASSOCIATION

and does hereby irrevocably constitute and appoint the officers of said Association to transfer said account on the books of said Association.

This ..... day of ....., 19 .....

Signature*.....

In the presence of.....

The undersigned is the transferee of the account represented by the within certificate and has executed application for the account and signature card.

Signature*.....

.....

Transfer entered of record..... , 19 .....

COLUMBIA FEDERAL SAVINGS AND LOAN ASSOCIATION

By.....

*NOTE: Signature of any one co-tenant (with right of survivorship) is binding on the others.

[fol. 33]

[The Prudential
Building Association]

Shares _____ No.

Address

_____ member of The Prudential Building Association, Washington, D. C., subject to the lawful provisions of its constitution and by-laws.

Date _____ 19

ALWAYS BRING THIS BOOK WITH YOU
OR MAIL WITH PAYMENT.

IMPORTANT

This book must accompany all transactions.

Remittances may be made through the mail by check or money order.

All items credited in this book are subject to final collection of check or draft.

Members should notify the Association of any change of address. This will insure the delivery of Association reports and correspondence.

Keep this book smooth and clean. If lost, notify the Association immediately.

Safety of your Account in this Association is fully insured up to $10,000 by the FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, Washington, D. C., an instrumentality of the United States Government.

THE PRUDENTIAL BUILDING ASSOCIATION

Washington, D. C.

Shares_____ **Par Value $50.00 per share**

OPTIONAL SHARE CERTIFICATE

THIS CERTIFIES that _____

_____

_____

he ____ subscribed for and made the initial payment upon _____ Optional Shares of the undersigned. This certificate is issued, and by the acceptance hereof, is held subject to all the provisions of the laws of the District of Columbia, the Certificate of Incorporation and By-Laws of the undersigned, and is transferable on the books of the undersigned by the holder hereof in person, or by duly authorized attorney, upon surrender of this certificate properly endorsed. The undersigned may treat the holder of record hereof as the owner for all purposes without being affected by any notice to the contrary until this certificate is transferred on the books of the undersigned. Certificates will not be transferred unless and until the transferee has made proper application for and has been accepted as a member of the undersigned.

The holder hereof may make payments in such amounts and at such times as he may elect until, together with the dividends apportioned and credited hereto, the full par value of shares represented hereby shall have accumulated, whereupon the certificates shall become full paid and non-assessable and shall thereupon be exchangeable for a full-paid share certificate at the option of the holder hereof without cost.

The holder hereof is entitled to semi-annual apportionment and credit of dividends on the first days of January and July of each year as may be determined by the Board of Directors out of net profits, undivided profits or surplus of the undersigned, sharing equally with all shares issued by the undersigned, pro rata to paid-in value, including credited dividends, provided, however, that the Board of Directors in its discretion may pay or apportion and credit dividends upon shares of the association in connection with which a membership fee has heretofore been paid at a rate not exceeding one per cent greater than the rate of dividends apportioned and credited to shares of the association in connection with which no membership fee has heretofore been paid. The holder hereof is entitled to equal distribution of net assets with all other shares issued by the undersigned, pro rata to paid-in value, including credited dividends, in the event of voluntary or involuntary liquidation, dissolution or winding up of the undersigned.

The shares represented hereby may be withdrawn at any time upon thirty days' written notice to the undersigned of intention to withdraw; provided, however, that if such shares are pledged as security for an obligation to the undersigned the full amount of such withdrawal shall be first applied in payment of such obligation. Withdrawal applications shall be filed and paid in the order of their receipt, provided, that at no time shall the undersigned be required to apply in payment of withdrawal applications more than one-half of the funds in the treasury. Upon withdrawal the holder shall be entitled to receive the amount paid in, together with such dividends as shall have been declared thereon, less all fines due and a proportionate part of all losses and other charges incurred.

WITNESS, the seal of the undersigned and the signature of its duly authorized officer, this the ____ day of _____, 19____.

THE PRUDENTIAL BUILDING ASSOCIATION

_____

Authorized Signature

CHARTER AND BY-LAWS

OF

Columbia Federal Savings

AND LOAN ASSOCIATION

ESTABLISHED 1907

730 ELEVENTH STREET, N. W.

WASHINGTON 1, D. C.

MEMBER

FEDERAL HOME LOAN BANK SYSTEM

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

or decrease the number of directors of the association, shall be stated in writing and filed with the secretary of the association on or before thirty (30) days before the date on the annual meeting, and all business so stated, proposed and filed, shall be considered at the annual meeting, but no other proposal shall be acted upon at the annual meeting. Any member may make any other proposal at the annual meeting and the same may be discussed and considered, but unless stated in writing and filed with the secretary thirty (30) days before the meeting such proposal shall be laid over for action at an adjourned, special or regular meeting of the members taking place thirty (30) days or more thereafter. This provision shall not prevent the consideration and approval or disapproval at the annual meeting of the reports of officers and committees, but in connection with such reports no new business shall be acted upon at such annual meeting unless stated and filed as herein provided.

14. **Voting by proxy.** Voting at any annual or special meeting of the members may be made by proxy, it being provided that no proxies shall be voted at any meeting unless such proxies shall have been placed on file with the secretary of the association, for verification, at least five (5) days prior to the date on which such meeting shall convene.

15. **Annual dividends.** The association shall be authorized to pay dividends or bonuses on outstanding [illegible] bonuses shall be set forth in the rules and regulations made by the Home Loan Bank Board.

CHARTER N

1. **Corporate title.** The full corporate title of the Federal association hereby chartered is

Columbia Federal Savings and Loan Association

2. **Office.** The home office shall be located at Washington, in the District of Columbia.

3. **Objects and powers.** The objects of the association are to promote thrift by providing a convenient and safe method for people to save and invest money and to provide for the sound and economical financing of homes; and, in the accomplishment of such objects, it shall have perpetual succession and power: (1) to act as fiscal agent of the United States when designated for that purpose by the Secretary of the Treasury, under such regulations as he may prescribe, and shall perform all such reasonable duties as fiscal agent of the United States as he may require and to act as agent for any other instrumentality of the United States when designated for that purpose by any such instrumentality; (2) To sue and be sued, complain and defend in any court of law or equity; (3) To have a corporate seal, affixed by imprint, facsimile or otherwise; (4) To appoint officers and agents as its business shall require, and allow them suitable compensation; (5) To adopt bylaws not inconsistent with the Constitution or laws of the United States and rules and regulations adopted thereunder and this charter; (6) To raise its capital, which shall be unlimited, by accepting payments on savings accounts representing share interests in the association; (7) To borrow money; (8) To lend and otherwise invest its funds; (9) To wind up and dissolve, merge, consolidate, convert, or reorganize; (10) To purchase, hold, and convey real and personal estate consistent with its objects, purposes, and powers; (11) To mortgage or lease any real and personal estate and take such property by gift, devise, or bequest; and (12) To exercise all powers conferred by law. In addition to the foregoing powers expressly enumerated, this association shall have power to do all things reasonably incident to the accomplishment of its express objects and the performance of its express powers. It shall exercise its powers in conformity with all

(c) To fix the compensation of directors, officers, and employees; and to remove any officer or employee at any time with or without cause;

(d) To extend leniency and indulgence to borrowing members who are in distress and generally to compromise and settle any debts and claims;

(e) To limit payments on capital which may be accepted;

(f) To reject any application for savings accounts or membership; and

(g) To exercise any and all of the powers of the association not expressly reserved by the charter to the members.

8. **Execution of instruments, generally.** All documents and instruments or writings of any nature shall be signed, executed, verified, acknowledged, and delivered by such officers, agents, or employees of the association or any one of them and in such manner as from time to time may be determined by resolution of the board of directors. All notes, drafts, acceptances, checks, endorsements, and all evidences of indebtedness of the association whatsoever shall be signed by such officer or officers or such agent or agents of the association and in such manner as the board of directors may from time to time determine. Endorsements for deposit to the credit of the association in any of its duly authorized depositaries shall be made in such manner as the board of directors may from time to time determine. Proxies to vote with respect to shares or accounts of other associations or stock of other corporations owned by or standing in the name of the association may be executed and delivered from time to time on behalf of the association by the president or a vice president and the secretary or an assistant secretary of the association or by any other person or persons thereunto authorized by the board of directors.

9. **Savings account certificates.** Such officers or employees as may be designated by the board of directors shall deliver to each person upon the initial payment on his savings account in the association an account book or other written evidence of such account.

10. **Seal.** The seal shall be two concentric circles between which shall be the name of the association. The year of

the next annual meeting of the members. Directors shall be elected for periods of 3 years and until their successors are elected and qualified, but provision shall be made for the election of approximately one-third of the board of directors each year.

6. **Withdrawals.** The association shall have the right to pay the withdrawal value of its savings accounts at any time upon application therefor and to pay the holders thereof the withdrawal value thereof. Upon receipt of a written request from any holder of a savings account of the association for the withdrawal from such account of all or any part of the withdrawal value thereof, the association shall within 30 days pay the amount requested; **Provided,** That if the association is unable to pay all withdrawals requested at the end of 30 days from the date of such requests, it shall then pay all withdrawals requested in accordance with such methods and procedures as to amounts and allotments of funds for such purposes as shall be provided in regulations made by the Home Loan Bank Board in effect at the date of the request for withdrawal. Holders of savings accounts for which application for withdrawal has been made shall remain holders of savings accounts until paid and shall not become creditors.

7. **Redemption.** At any time sufficient funds are on hand, the association shall have the right to redeem, by lot or otherwise as the board of directors may determine, all or any part of any of its savings accounts on June 30 or December 31, by giving 30 days' notice of such redemption by registered mail addressed to the holder of each such savings account at his last address as recorded on the books of the association. The association may not redeem any of its savings accounts when there is an impairment of its capital or when it has any request for withdrawal which has been on file and unpaid for more than 30 days. The redemption price of each savings account redeemed shall be the full value thereof, as determined by the board of directors, but in no event shall the redemption price be less than the withdrawal amount of such savings account. If a savings account which is redeemed is entitled to participate in any reserve for bonus, the amount in such reserve for bonus which is properly allocable to such savings account shall be paid as part of the redemption price thereof. If any notice of redemption shall have been duly given, and if the funds necessary for such redemption shall have been set aside so as

association. Such notice shall state the name of the association, the place of the annual meeting and the time when it shall convene. A similar notice shall be posted in a conspicuous place in each of the offices of the association during the 14 days immediately preceding the date on which such annual meeting shall convene. If any member, in person or by attorney thereunto authorized, shall waive, in writing, notice of any annual meeting of members, notice thereof need not be given to such member.

(b) Notice of each special meeting shall be either published once a week for the two consecutive calendar weeks (in each instance on any day of the week) immediately prior to the week in which such special meeting shall convene, in a newspaper printed in the English language and of general circulation in the city or county in which the home office of the association is located, or mailed postage prepaid at least 15 days and not more than 30 days prior to the date on which such special meeting shall convene to each of its members of record at his last address appearing on the books of the association. Such notice shall state the name of the association, the purpose or purposes for which the meeting is called, the place of the special meeting and the time when it shall convene. A similar notice shall be posted in a conspicuous place in each of the offices of the association during the 14 days immediately preceding the date on which such special meeting shall convene. If any member, in person or by attorney thereunto authorized, shall waive, in writing, notice of any special meeting of members, notice thereof need not be given to such member.

4. **Meetings of the board of directors.** The board of directors shall meet regularly without notice at the home office of the association at least once each month at the hour and date fixed by resolution of the board of directors, provided that the place of meeting may be changed by the directors. Special meetings of the board of directors may be held at any place in the territory in which the association may make loans specified in a notice of such meeting and shall be called by the secretary upon the written request of the president, or of three directors. All special meetings shall be held upon at least 3 days' written notice to each director unless notice be waived in writing before or after such meeting. Such notice shall state the place, time, and purposes of such meeting. A majority of the directors shall constitute a quorum for the transaction of

the 6 months' period to be distributed promptly on its savings accounts, ratably, as declared by the board of directors, to the withdrawal value thereof; in lieu of or in addition to such net earnings, any of the association's surplus funds may be likewise distributed. Such net earnings shall be credited to savings accounts or paid, as directed by the owner. All holders of savings accounts shall participate at the same rate and on the same basis in the distribution of earnings: **Provided,** That the association is not required to distribute earnings on short-term savings accounts or on accounts of $10 or less. Except as provided above, earnings shall be declared on all savings accounts of record at the close of each such 6 months' period, on the withdrawal value of each such account at the beginning of the said 6 months' period, plus the payments made thereon during such period (less amounts withdrawn, and, for purposes of participation in earnings, deducted from the latest previous payments), computed at the declared rate for the time invested, determined as provided below. The date of investment shall be the date of actual receipt of such payments by the association, unless the board of directors fixes a date, not later than the tenth of the month, for determining the date of investment of payments on savings accounts or designated classes thereof. Payments, affected by such determination date, received by the association on or before such determination date, shall receive earnings as if invested on the first of such month. Payments, affected by such determination date, received subsequent to such determination date, shall receive earnings as if invested on the first of the next succeeding month. Notwithstanding any other provision of its charter, the association may distribute net earnings on its savings accounts on such other basis and in accordance with such other terms and conditions as may from time to time be authorized by regulations made by the Home Loan Bank Board. All holders of savings accounts of the association shall be entitled to equal distribution of assets, pro rata to the value of their savings accounts, in the event of voluntary or involuntary liquidation, dissolution, or winding up of the association.

11. **Amendment of charter.** No amendment, addition, alteration, change, or repeal of this charter shall be made unless such proposal is made by the board of directors of the association, and submitted to and approved by the Home Loan Bank Board, and is thereafter submitted to and approved by the members at a legal meeting. Any amendment, addition, alteration, change, or repeal so acted upon and approved shall be effective, if filed with and approved by the Home Loan Bank Board, as of the date of the final approval of, or as fixed by, the members.

Issued at Washington, D. C., this 17th day of October, 1949.

(Seal) Home Loan Bank Board,

FILED

By: WALL K. IVERS
(Chairman)

NOV 1 1960

Attest:

J. FRANCIS MCCARRY HARRY M. HULL, Clerk
(Secretary)

Charter No. 1600

Original Federal Charter issued October 25, 1939.

BY-LAWS

COLUMBIA FEDERAL SAVINGS AND LOAN ASSOCIATION

1. **Annual meetings of members.** The annual meeting of the members of the association for the election of directors and for the transaction of any other business of the association shall be held at its home office at 2 o'clock in the afternoon on the third Wednesday in January of each year, if not a legal holiday, or if a legal holiday then on the next succeeding day not a legal holiday. The annual meeting may be held at such other time on such day or at such other place in the same community as the board of directors may determine. At each annual meeting, the officers shall make a full report of the financial condition of the association and of its progress for the preceding year, and shall outline a program for the succeeding year. Annual meetings of the members shall be conducted in accordance with Roberts' Rules of Order.

2. **Special meetings of members.** Special meetings of the members of the association may be called at any time by the president or the board of directors, and shall be called by the president, a vice president, or the secretary upon the written request of members holding of record in the aggregate at least one-tenth of the capital of the association. Such written request shall state the purposes of the meeting and shall be delivered at the home office of the association addressed to the president. Special meetings of the members shall be conducted in accordance with Roberts' Rules of Order.

3. **Notice of meeting of members.** (a) Notice of each annual meeting shall be either published once a week for the two successive calendar weeks (in each instance on any day of the week) immediately prior to the week in which such annual meeting shall convene, in a newspaper printed in the English language and of general circulation in the city or county in which the home office of the association is located, or mailed postage prepaid at least 15 days and not more than 30 days prior to the date on which such annual meetings shall convene to each of its members of record at his last address appearing on the books of the

to be and to continue to be available for that purpose, earnings upon such account shall cease to accrue from and after the date specified as the redemption date and all rights with respect to each such account shall forthwith, after such redemption date, terminate, except only the right of the holder of record of such savings account to receive the redemption price thereof without earnings.

8. **Loans and investments.** The association may make any loan or investment authorized by statute and the rules and regulations made by the Home Loan Bank Board and in effect on August 15, 1949. It may make such additional loans and investments as may thereafter be authorized by amendments of the said rules and regulations.

9. **Power to borrow.** The association may borrow money in an aggregate amount not exceeding one-half of its capital; the amount which may be borrowed from sources other than a Federal home loan bank shall not exceed one-tenth of such capital. Notwithstanding the foregoing limitations, the association may, with prior approval by the Home Loan Bank Board, borrow from a Federal home loan bank or from any Federal agency or instrumentality without limitation, upon such terms and conditions as may be required by such bank or agency. The association may pledge and otherwise encumber any of its assets to secure its debts.

10. **Reserves, surplus, and distribution of earnings.** The association shall maintain general reserves for the sole purpose of meeting losses; such reserves shall include the reserve required for insurance of accounts. Any losses may be charged against general reserves. If and whenever the general reserves of the association are not equal to at least 10 percent of its capital, it shall, as of June 30 and December 31 of each year, credit to such reserves an amount equivalent to at least 5 percent of its net earnings for the 6 months' period, or such amount as may be required by the Federal Savings and Loan Insurance Corporation, whichever is greater, until such reserves are equal to at least 10 percent of the association's capital. As of June 30 and December 31 of each year, after payment or provision for payment of all expenses, credits to general reserves and such credits to surplus as the board of directors may determine, and provision for bonus on savings accounts as authorized by regulations made by the Home Loan Bank Board, the board of directors of the association shall cause the remainder of the net earnings of the association for

business. The act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the board of directors. All meetings of the board of directors shall be conducted in accordance with Roberts' Rules of Order.

5. **Officers, employees, and agents.** Annually at the meeting of the board of directors of the association next following the annual meeting of the members of the association, the board of directors shall elect a president, one or more vice presidents, a secretary, and a treasurer: **Provided,** That the offices of secretary and treasurer may be held by the same person, and a vice president may also be either the secretary or the treasurer. The board of directors may appoint such additional officers and such employees and agents as it may from time to time determine. The term of office of all officers shall be one year or until their respective successors are elected and qualified; but any officer may be removed at any time by the board of directors. In the absence of designation from time to time of powers and duties by the board of directors, the officers shall have such powers and duties as generally pertain to their respective offices.

6. **Resignation of directors.** Any director may resign at any time by sending a written notice of such resignation to the office of the association delivered to the secretary. Unless otherwise specified therein, such resignation shall take effect upon receipt thereof by the secretary. More than three consecutive absences from regular meetings of the board of directors, unless excused by resolution of the board of directors, shall automatically constitute a resignation, effective when such resignation is accepted by the board of directors.

7. **Powers of the board.** The board of directors shall have power—

(a) To appoint and remove by resolution the members of an executive committee, the members of which shall be directors, which committee shall have and exercise the powers of the board of directors between the meetings of the board of directors;

(b) To appoint and remove by resolution the members of such other committees as may be deemed necessary and prescribe the duties thereof;

laws of the United States as they now are, or as they may hereafter be amended, and with all rules and regulations which are not in conflict with this charter now or hereafter made thereunder.

4. **Members.** All holders of the association's savings accounts and all borrowers therefrom are members. In the consideration of all questions requiring action by the members of the association, each holder of a savings account shall be permitted to cast one vote for each $100, or fraction thereof, of the withdrawal value of his account. A borrowing member shall be permitted, as a borrower, to cast one vote, and to cast the number of votes to which he may be entitled as the holder of a savings account. No member, however, shall cast more than 30 votes. Voting may be by proxy. Any number of members present at a regular or special meeting of the members shall constitute a quorum. A majority of all votes cast at any meeting of members shall determine any question. The members who shall be entitled to vote at any meeting of the members shall be those owning savings accounts and borrowing members of record on the books of the association at the end of the calendar month next preceding the date of such meeting. The number of votes which each member shall be entitled to cast at any meeting of the members shall be determined from the books of the association as of the end of the calendar month next preceding the date of such meeting. Those who were members at the end of the calendar month next preceding the date of a meeting of members but who shall have ceased to be members prior to such meeting shall not be entitled to vote thereat. All savings accounts shall be nonassessable.

5. **Directors.** The association shall be under the direction of a board of directors of not less than 5 nor more than 15, as fixed in the association's bylaws or, in the absence of any such bylaw provision, as from time to time expressly determined by resolution of the association's members. Each director of the association shall be a member of the association, and a director shall cease to be a director when he ceases to be a member. Directors of the association shall be elected by its members by ballot: **Provided,** That in the event of a vacancy in the directorate, including vacancies created by an increase in the number of directors, the board of directors may fill such vacancy, if the members of the association fail so to do, by electing a director to serve until

incorporation, the word "incorporated," or an emblem may appear in the center.

11. **Amendment.** These bylaws may be amended at any time by a two-thirds affirmative vote of the board of directors, or by a vote of the members of the association. Each and every amendment shall be subject to the approval of the Home Loan Bank Board, and shall be ineffective until such approval shall be given: **Provided,** That, without the approval of the Home Loan Bank Board, section 1 of the bylaws may be amended so that the time of day for convening the annual meeting may be fixed at any hour not earlier than 10 a. m. or later than 9 p. m., and a section providing for a bonus may be added or repealed as provided in the rules and regulations for the Federal Savings and Loan System.

12. **Nominating committee.** The president, at least 30 days prior to the date of each annual meeting, shall appoint a nominating committee of three persons who are members of the association. Such committee shall make nominations for directors in writing, and deliver to the secretary such written nominations at least 15 days prior to the date of the annual meeting, which nominations shall forthwith be posted in a prominent place in the home office for the 15 days' period prior to the date of the annual meeting. Provided such committee is appointed and makes such nominations, no nominations for directors except those made by the nominating committee shall be voted upon at the annual meeting unless other nominations by members are made in writing and delivered to the secretary of the association at least 10 days prior to the date of the annual meeting, which nominations shall forthwith be posted in a prominent place in the home office for the 10 days' period prior to the date of the annual meeting. Ballots bearing the names of all persons nominated by the nominating committee and by other members prior to the annual meeting shall be provided for use by the members at the annual meeting. If at any time the president shall fail to appoint such nominating committee, or the nominating committee shall fail or refuse to act at least 15 days prior to the annual meeting, nominations for directors may be made at the annual meeting by any member and shall be voted upon.

13. **New business.** Any new business to be taken up at the annual meeting, including any proposal to increase

NOTICE

IN ORDER THAT MEMBERS MAY CLEARLY UNDERSTAND THEIR RIGHTS AND PRIVILEGES IN THIS ASSOCIATION, IT IS RECOMMENDED THAT THE FOLLOWING SECTIONS BE CAREFULLY READ:

CHARTER

Section 4. Members.

Section 6. Withdrawals.

Section 10. Reserves, surplus and distribution of earnings.

BY-LAWS

Section 1. Annual Meeting of Members.

AMERICAN BANK STATIONERY CO., BALTO., MD.
FORM NO. 112-N

INSURED PROTECTION

For Your Savings

Under an Act of Congress, approved June 27, 1934, the full amount of each Member's savings in this Association is automatically—

INSURANCE COVERAGE NOW $10,000

INSURED AGAINST LOSS UP TO $5,000

by the Federal Savings and Loan Insurance Corporation, an instrumentality of the United States Government.

[fol. 43]

IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed September 15, 1960

Notice is hereby given this 15th day of September, 1960, that Aetna Casualty & Surety Company hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 13th day of September, 1960, in favor of Harry Clifford Porter against said Aetna Casualty and Surety Company.

/s/ John L. Laskey
Attorney for Plaintiff

* * * *

IN UNITED STATES DISTRICT COURT

APPELLANT'S STATEMENT OF THE PARTS OF RECORD TO BE PRINTED IN JOINT APPENDIX—Filed November 18, 1960

Appellant Aetna Casualty and Surety Company designates the following portions of the record herein to be printed in the Joint Appendix to appellant's brief:

1. The Judgment of February 8, 1960;
2. Attachment on Judgment and Interrogatories issued to Columbia Federal Savings and Loan Association on February 24, 1960;
3. Attachment on Judgment and Interrogatories issued to Eethelbert B. Frey, Esq. on February 24, 1960;
4. Attachment on Judgment and Interrogatories issued to Prudential Building Association on February 24, 1960;
5. Answer of Columbia Federal Savings and Loan Association to Attachment and to Interrogatories;
6. Answer of Prudential Building Association to Attachment and to Interrogatories;

7. Answer of Ethelbert B. Frey, Esq. to Attachment and to Interrogatories;

8. Motion to Quash Attachment by Ethelbert B. Frey, Esq. filed March 1, 1960;

[fol. 44] 9. Exhibit A to Opposition of Plaintiff to Motion to Quash Attachment filed March 11, 1960;

10. Motion for Judgment of Condemnation Against Credits in Hands of Ethelbert Frey, Esq.;

11. Motion for Judgment of Condemnation Against Credits in Hands of Prudential Building Association;

12. Motion for Judgment of Condemnation Against Credits in Hands of Columbia Federal Savings and Loan Association;

13. Letter of June 7, 1960, addressed to Judge Youngdahl by Laskey and Laskey, said letter being labeled Exhibit A, together with attachments marked Exhibits B and C;

14. Memorandum Opinion of Judge Youngdahl of July 14, 1960;

15. Order of September 13, 1960;

16. Exhibits filed pursuant to Order of September 13, 1960;

17. Notice of Appeal filed September 15, 1960;

18. This Statement.

LASKEY and LASKEY

By /s/ John L. Laskey
Attorney for Appellant

[fol. 45]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 16,066

AETNA CASUALTY AND SURETY COMPANY, APPELLANT

v.

HARRY CLIFFORD PORTER, APPELLEE

Appeal from the United States District Court for the District of Columbia

Mr. John L. Laskey for appellant.

Mr. Ethelbert B. Frey for appellee.

Before WILBUR K. MILLER, Chief Judge, and PRETTYMAN and BURGER, Circuit Judges.

OPINION—Decided July 13, 1961

WILBUR K. MILLER, *Chief Judge*: Aetna Casualty and Surety Company appeals from an order of the District Court quashing its attachment of certain share or investment accounts in federal savings and loan associations which were established and augmented by Porter's committee from moneys received for him from the United States Veterans' Administration.

The situation which gave rise to the action should first be noted. Gore Properties, Inc., a corporation engaged in the real estate business in the District of Columbia, employed one William F. Hickey as resident manager of [fol. 46] the Ritz Apartments, one of its properties. In the summer of 1952, Hickey hired the present appellee, Harry Clifford Porter, a non-commisioned officer in the United States Air Force, to paint the interiors of several apartment units in the development. The manager knew nothing about Porter except that he had seen him in military uniform, and made no investigation into his background or character. He directed Porter to paint the

apartment of one of the tenants, Miss Codie A. Whitman, a young lady who lived alone. Porter murdered Miss Whitman, for which he was subsequently indicted. His later trial resulted in a verdict of not guilty by reason of insanity.

After the murder, Miss Whitman's administratrix brought a wrongful death action against Gore, its manager, Hickey, and the American Security and Trust Company, Gore's collection agent, alleging they were negligent in hiring Porter without any investigation into his background or character, and in failing properly to supervise and control him. The trial court directed verdicts in favor of all defendants, and the plaintiff appealed. This court reversed and remanded, as to defendants Gore and Hickey.

The defense of the wrongful death action had been undertaken by Aetna Casualty and Surety Company, under the provisions of a policy of liability insurance which it had issued to Gore. Upon remand, counsel for Aetna effected a settlement of the suit, and the company paid the settlement amount. Thereafter, under the subrogation provision of the Gore policy, Aetna sued Porter to recover the money it had paid in Gore's behalf and was awarded judgment. On October 11, 1960, Porter's appeal therefrom was dismissed as frivolous by an order of this court.

After obtaining this indemnity judgment, Aetna attached the checking account of Porter's committee and also the share or investment accounts in two federal sav- [fol. 47] ings and loan associations which stood in the name of the committee. The latter moved to quash the attachments on the theory that the bank checking account and the accounts in the federal associations were statutorily exempt from the claims of creditors,[1] because they were,

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[1] 38 U. S. C. § 3101(a) is, in pertinent part, as follows:

"Payments of benefits due or to become due under any law administered by the Veterans' Administration shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment,

as he alleged, payments received by the committee under a law administered by the Veterans' Administration. The District Court granted the motion to quash except as to the dividends which had been added to the accounts in the federal associations. Apparently conceding that the checking account was exempt, Aetna states in its brief that this appeal is from the District Court's action "in quashing the attachments laid against the corpus of the investment accounts in the two savings institutions."

Thus the question is whether share accounts in federal savings and loan associations held by a veterans' committee are exempt from the claims of creditors because they were paid for with money received by the committee as "Payments of benefits due . . . under any law administered by the Veterans' Administration . . .."

The Supreme Court had before it, in *Trotter, Gdn.* v. *Tennessee*,[2] the question whether lands purchased by the [fol. 48] guardian of a veteran with moneys received from the United States for the use of the disabled ward are subject to taxation. The World War Veterans' Act, there involved, provided that "The compensation, insurance and maintenance and support allowance payments under Parts II, III and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors . . . and shall be exempt from all taxation." Mr. Justice Cardozo, writing for a unanimous court, said, at pages 356-357:

> ". . . The moneys payable to this soldier were unquestionably exempt till they came into his hands or the hands of his guardian. *McIntosh* v. *Aubrey*, 185 U.S. 122. We leave the question open whether the exemption remained in force while they continued in those hands or on deposit in a bank. [Cases cited.] Be that as it may, we think it very clear that there was an end to the exemption when they lost the

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levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to claims of the United States arising under such laws nor shall the exemption therein contained as to taxation extend to any property purchased in part or wholly out of such payments. . . ."

[2] 290 U. S. 354 (1933).

quality of moneys and were converted into land and buildings. The statute speaks of 'compensation, insurance, and maintenance and support allowance payable' to the veteran, and declares that these shall be exempt. We see no token of a purpose to extend a like immunity to permanent investments or the fruits of business enterprises. Veterans who choose to trade in land or in merchandise, in bonds or in shares of stock, must pay their tribute to the state. . . ."

Although the *Trotter* case left open the question whether the exemption remains in force while the benefit payments remain in the veteran's hand "or on deposit in a bank," the Supreme Court thought it "very clear" that the exemption ends when the benefit payments are converted into permanent investments, land, buildings, bonds or shares of stock.

Congress answered the first of these reserved questions by providing that the payments shall not be liable to process "either before or after receipt by the beneficiary" in § 3 of the World War Veterans Act of 1935.[3] The [fol. 49] second question was answered by the Supreme Court in *Lawrence* v. *Shaw* [4] when it said concerning bank deposits stipulated to be "uninvested balances" of the government payments:

". . . We hold that the immunity from taxation does attach to bank credits of the veteran or his guardian which do not represent or flow from his investments but result from the deposit of the warrants or checks received from the Government when such deposits are made in the ordinary manner so that the proceeds of the collection are subject to draft upon demand for the veteran's use. In order to carry out the intent of the statute, the avails of the government warrants or checks must be deemed exempt until they are expended or invested."

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[3] 49 STAT. 607, 609; 38 U. S. C. § 454a.

[4] 300 U. S. 245, 250-1 (1937).

The Supreme Court had occasion to construe 38 U. S. C. § 3101 in *Carrier* v. *Bryant*.[5] Relying on *Trotter* v. *Tennessee* and *Lawrence* v. *Shaw, supra*, the Court held that investments purchased with money received in settlement of benefits are not "payments due or to become due" which are statutorily exempt from the claims of creditors.

The immediate question is, therefore, whether the acquisition of share accounts in federal associations is an investment of the type the Supreme Court said is not exempt, or whether it is tantamount to an uninvested balance of government payments on deposit in a bank, which has been held to be exempt.

It appears that here the committee deposited in his ordinary checking account all government payments received by him. He paid out of that account the ordinary and necessary expenses incident to the veteran's care and maintenance, and built up the accounts in the federal associations by drawing from the checking account such sums [fol. 50] as he thought could be withdrawn without jeopardizing its adequacy for the payment of current expenses. This was done under the authority of Rule 23 of the District Court which governs the investment of trust funds.[6]

Obviously the committee created the accounts in the federal associations so that he might obtain for Porter

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[5] 306 U.S. 545, 547 (1939).

[6] Rule 23 is in part as follows:

"Investment of trust funds, unless otherwise provided in the instrument creating the trust, or except under extraordinary conditions set forth fully to the court, will ordinarily be sanctioned only when made in the obligations meeting the following requirements:

* * * *

"Section II-a. *Federal Savings and Loan Associations, Building and Loan Associations, and Savings and Loan Associations.* Investment shares, certificates and deposit accounts in said institutions not exceeding $10,000.00 in one institution, provided such institution is located and doing business in the District of Columbia and its accounts are insured by the Federal Savings and Loan Insurance Corporation under the provisions of Subchapter IV, Title 12 of the United States Code."

some income from funds not immediately needed for his maintenance, which could not be obtained so long as such funds remained on deposit in his ordinary checking account. From this we conclude that the committee acquired the federal associations' shares by way of investing that portion of the government payments which he considered to be surplus income over and above ordinary and necessary expenses.

It may not be generally known, but it is nevertheless true, that federal savings and loan associations are not obligated to permit withdrawals on demand, but only to honor withdrawal requests within thirty days. This fact not only sharply distinguishes the share accounts from ordinary bank deposits by preventing their use as checking accounts, but also stamps them with the character-[fol. 51] istics of investments. A share account in a federal association is distinguishable from an ordinary bank savings deposit in other respects: the owner of the share account becomes, by virtue of that ownership, a voting member of the association and thus more nearly comparable to a stockholder of a bank than one of its depositors; and we have shown that, as a share account owner, he is not a creditor of the association as a depositor is a creditor of the bank. Indeed the Home Owners Loan Act under which a federal association is created describes the purpose as "to provide local mutual thrift institutions in which people may *invest* their funds . . . ." (Emphasis added.) While it is not a controlling consideration, it should be noted that the yield on share accounts in a federal association is generally higher than on deposits in savings banks. *Cf. Wisconsin Bankers Association* v. *Robertson*, No. 16,212, decided this date.

We think it clear that the committee's accounts in the federal savings and loan associations were investments subject to the claims of creditors. It follows that the District Court erred in quashing the attachments. Its order will be set aside and the case will be remanded with instructions to deny the motion to quash and to grant the motion for judgment subjecting the share accounts to appellant's judgment debt.

It is so ordered.

PRETTYMAN, *Circuit Judge*, dissenting: The clear purpose of the Act "[t]o safeguard the estates of veterans derived from payments of pension," etc.,[1] is to make these benefit payments available for use in the current maintenance and support of the veteran, without interference [fol. 52] by taxes or creditors. Consistent with this principle the courts have held that so long as the payments remain as a bank deposit they are immune from outside absorption;[2] but, when they pass into the form of investments in land or buildings (which would indicate they are not currently needed), they lose their immunity. Thus, to my mind, the cases clearly implement the basic Congressional purpose.

In the case at bar the benefit payments were deposited in "Savings Account[s]" with federal savings and loan associations. This was not a disposition which made the funds difficult of availability for current purposes. The majority opinion points to rules of the associations requiring 30 days' notice for withdrawal, but at least one of them advertises (Ex. C) that since its organization in 1907 its practice has been to pay withdrawals promptly upon demand; indeed my understanding (which is such common understanding that I can take judicial notice of the fact) is that no such association in Washington requires such notice. In respect to ordinary savings accounts banks generally reserve a right to demand 30 or 60 days' notice,[3] but as a matter of custom the depositor can withdraw upon demand. Needs for current maintenance and support are not necessarily steady in amount month by month; such needs fluctuate; savings from the monthly income for several months may be accumulated to meet a recurrent need; a suit of clothes, potential doctors' bills, repairs to a home are a few examples from many familiar items. And in the case before us there are the potential needs of rehabilitation.

Of course the nature of some dispositions of funds is clear; purchases of land, stocks, etc., on the one hand and

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[1] 49 STAT. 607 (1935).

[2] *E. g., Lawrence* v. *Shaw*, 300 U.S. 245 (1937).

[3] See Mallett v. Tunnicliffe, 102 Fla. 809, 137 So. 238 (1931).

regular checking accounts in banks on the other. It seems to me that the facts surrounding the deposits we have [fol. 53] here would be material, even dispositive, in the case. On the naked legalisms they might be one or the other. On the facts their nature might clearly appear. Thus, if they had been left on deposit for a long time while current needs were met by other funds, or if their accumulation were much in excess of current needs (including a reasonable auxiliary reserve for contingencies), the deposits might clearly appear to be investments. But, if the facts were that these deposits were periodically used for current needs, or if they were actually so needed and were available and the committee intended so to use them, their nature as current deposits might clearly appear. Deposits in these associations may, as a bare legal matter, be one or the other.

I would not decide this case upon niceties of legalisms as to a "deposit" and an "investment". I would decide it on the broad intention of the statute, as construed by the courts, and the plain, simple facts of the case. Here the committee put part of the benefit payments in accounts in financial institutions where by practice they are readily available, meantime accumulating a small interest, surely as many a prudent person living on periodical payments would do; and now the committee says he wants to, and would, withdraw the funds for purposes of maintenance and support of the veteran.

The committee before us claims he can prove by documentary evidence that he actually needs, and would use, these funds to meet a bill already rendered him for current subsistence of this veteran.

I would remand the case for a factual determination of the nature of these deposits, *i.e.*, current deposits or investments in the sense in which the Supreme Court used that term in *the Lawrence* case.[4] I suppose the burden of proof should be on the committee, since he alone has the requisite information.

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[4] *Supra* note 2.

[fol. 54] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Civil 57-57

No. 16,066

AETNA CASUALTY AND SURETY COMPANY, APPELLANT

v.

HARRY CLIFFORD PORTER, APPELLEE

APPEAL FROM the United States District Court for the District of Columbia.

Before: Wilbur K. Miller, Chief Judge, and Prettyman and Burger, Circuit Judges.

JUDGMENT—July 13, 1961

THIS CAUSE came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

ON CONSIDERATION WHEREOF It is ordered and adjudged by this Court that the order of the District Court appealed from in this cause be, and it is hereby, set aside, and that this cause be, and it is hereby, remanded to the District Court for further proceedings consistent with the opinion of this Court.

It is further ORDERED by the Court that appellant herein recover from appellee its taxable costs on this appeal, and have execution therefor.

Per Chief Judge Wilbur K. Miller.

Dated: July 13, 1961.

Separate dissenting opinion by Circuit Judge Prettyman.

[fol. 55] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[Title omitted]

Appeal from the United States District Court
for the District of Columbia

PETITION FOR REHEARING EN BANC UNDER RULE 26—
Filed July 26, 1961

Appellee, Harry Clifford Porter, an ex-service man stationed at Saint Elizabeths Hospital, through his committee and counsel, respectfully petitions this Honorable Court for a rehearing en banc of the appeal of this case decided July 13, 1961 and for reasons therefore states:

1. In its decision of July 13, 1961 this Court did not rule upon the fundamental and basic issues in the case, which are (a) whether the section of the *United States Code, article 38-3101, page 125 and section 454 or 454A prevail in the matter of pension or disability funds which* [fol. 56] *have not changed their identity,* and (b) whether such monies received by the veteran, through his committee, *who was appointed by this Honorable Court* and after receiving of certain sums, was *further instructed by the Court* to deposit from time to time in a savings account for the benefit of this veteran and his rehabilitation, took said monies out of the exemption clause of the United States Code, article 38-3101, pages 125 and sections 454 and 454A.

The Court erred when it held that money so deposited and which had *never lost its identity,* was attachable; this is contrary to all rulings of the United States Court for the District of Columbia. In Re case of *Arthur* (vs) *Kercoud,* mental health case *# 35-57* and decided in December, 1959 by Judge Keech of the United States District Court for the District of Columbia. This same decision has been held in other cases by our Court and in many courts in other jurisdictions.

The Court erred in saying that the funds or money, so deposited was for stocks or shares in the savings associations. The record in the case will disprove that, as no shares were purchased as will be evidenced by the record of deposit books, exhibits A 1 and 2 and B 1 and 2. Photostats of original entries. They all hold, as well as the Probate Court of this jurisdiction, that should the depositor die, it would be treated as cash and not shares in said association.

The Court erred in holding that this particular case was in line with the cases cited in its opinion, *McIntosh* v. *Aubrey,* 185 U.S., *Trotter* v. *Tennessee,* 290 U.S., *Lawrence* v. *Shaw,* 300 U.S., and *Carrier* v. *Bryant,* 306 U.S., in which cases, so cited, in the opinion, *real estate, notes* and *mortgages* were purchased with pension or disability funds and in which cases your petitioner agrees that the said property, *real estate* or *notes* and *mortgages,* so purchased with disability funds, were not exempt from attachment and are not in *line* with this case.

The Court erred in holding that a savings association requires 30 days notice to withdraw money deposited therein; while there may be a rule for such in the associations, but no savings association in the District of Columbia requires any notice. It is a common rule and general practice, that one may deposit funds in an association, and the next day draw it out with the pass book, which is simplified banking.

[fol. 57] *The Court erred* in going back and beyond the judgment and attachment, as the only matter to be decided was whether the *United States Code, article 38-3101 and page 125, sections 454 or 454A is the controlling factor and the law covering veterans' pension or disability funds.*

In order to reply to that part of the opinion which goes beyond the judgment and attachment, petitioner relates the following facts; at the time of the incident referred to in 1952 in the opinion of the court, Harry Clifford Porter was declared of unsound mind and the so called confession of that date, which was used against him (an insane person) was wholly inadmissible as evidence, and as such, his constitutional rights have been

jeopardized, which have continued for nine years with no redress.

His disability funds received by his committee in mental health case # 1714-52 *were, by order of court, safely put away for his necessities, clothing, care and keep and for rehabilitation purposes,* if and when he is released. That the monies, so deposited by order of Court, did not at any time lose its identity as disability funds.

Lastly, that the recent opinion of the Court of Appeals of July 13, 1961, which was dissented to by *Judge Prettyman* of said Court, raises grave doubts as to the liability of veterans' pensions and disability funds against creditors which will affect thousands of ex-service men throughout the United States.

For the foregoing reasons it is respectfully submitted that the Court in its discretion may appropriately order a rehearing en banc.

s/ Ethelbert B. Frey
Committee & Attorney for Appellee

CERTIFICATE OF COUNSEL

I hereby certify that the foregoing petition for a rehearing en banc is presented in good faith and not for delay.

/s/ Ethelbert B. Frey
Committee & Attorney for Appellee

[fol. 58] CERTIFICATE OF SERVICE
(omitted in printing)

[fol. 59] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[Title omitted]

Appeal from the United States District Court for the District of Columbia

ANSWER TO PETITION FOR REHEARING EN BANC—
Filed August 5, 1961

For the convenience of the Court, the Appellant, Aetna Casualty and Surety Company, states herewith a short history of this litigation, which is as follows:

Some years ago, the Appellant issued a general liability policy to Gore Properties, Inc., a corporation engaged in the real estate business in the District of Columbia. Subsequently, the resident manager of one of the corporation's developments hired the Appellee, Harry Clifford Porter, a non-commissioned officer in the Air Force, to paint the interiors of certain apartment units in the development. Porter murdered one of the tenants, a young lady who lived alone. The serviceman's subsequent trial resulted in a verdict of not guilty by reason of insanity, and he was confined in St. Elizabeth's Hospital, where he still resides.

After the murder, the decedent's estate brought a wrongful death action against Appellant's insured. Trial resulted in directed verdicts in favor of the several Defendants. On appeal, this Court reversed and remanded. This is reported as *Kendall, Administratrix, etc.* v. *Gore Properties, Inc., et al.*, 98 U.S. App. D.C. 378, 236 F.2d 673.

[fol. 60] Subsequent to remand, the wrongful death action was settled, and Appellant paid the settlement amount. Thereafter, under the subrogation provisions of the policy, Appellant brought suit against Porter, on the theory of indemnity. Trial resulted in a judgment in favor of the Appellant. An appeal by Porter from this

judgment was dismissed by this Court on October 11, 1960 as "frivolous."

Appellant issued attachments based upon its judgment against certain assets of the Appellee. These assets consisted of investment accounts in two federal savings and loan associations and a cash checking account in the First National Bank of Washington, all standing in the name of the Appellee's Committee, Ethelbert B. Frey, Esq. The District Court granted Appellee's motion to quash the attachments, except as to the interest increments attached to the two investment accounts. Appellant then appealed, as to the action of the lower Court in quashing the attachments laid against the corpus of the two investment accounts.[1] On July 13, 1961, this Court (per Miller, Chief Judge, with Burger, Circuit Judge, concurring, and Prettyman, Circuit Judge, dissenting) reversed the order of the lower Court and remanded the case with directions to deny the motion to quash and to grant Appellant's motion for judgment of condemnation against the share or investment accounts. Thereafter, Appellee filed the instant Petition for Rehearing En Banc.

The history of the Appellee's accumulations is quite simple. After Porter was adjudicated insane and confined in St. Elizabeth's, his Committee periodically received disability payments from the Veterans Administration. Customarily, the Committee deposited these payments in an ordinary checking account, *i.e.*, an account earning no interest and subject to withdrawal on demand. From time to time, the Committee used some of these funds to pay bills incident to Porter's upkeep. Other sums, however, were deposited in share or investment accounts in the two savings institutions, pursuant to the provisions of District Court Rule 23, which specifically authorizes the "investment" of trust funds in "Federal [fol. 61] Savings and Loan Associations, Building and Loan Associations and Savings and Loan Associations."

Under the rules of the associations, share or account books were issued to the Committee, the accounts earned

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[1] Appellant conceded, as the Court of Appeals noted, that the District Court was correct in quashing the attachment laid against the checking account in the First National Bank of Washington.

interest payable at stated intervals, and the associations were not obligated to permit withdrawals on demand, but, rather, were only obliged to honor withdrawal requests within thirty days.

The question which the instant proceeding raised is wholly clear. It was phrased in Appellant's Brief as follows:

> "When the Committee of an incompetent veteran uses disability benefits payable to the veteran for the purchase of shares in savings institutions specifically approved by the Courts for the 'investment' of trust funds, are the resulting share interests 'investments', in the legal sense, and, thus, *not* exempt from attachment by a judgment creditor of the incompetent?"

As Appellant contended, the law is similarly clear. The judicial history of the exemption statute (38 U.S.C. s. 3101(a))[2] has made it manifest that the "exemption" from creditors' claims of benefits payable to a veteran is not absolute, and was not designed to extend to investments purchased with the benefits by or on behalf of the veteran. Accordingly, as suggested, the sole question was whether the investment accounts in the two savings institutions legally constituted "investments."

After due consideration of the appropriate decisions of the Supreme Court, the Majority of this Court concluded that:

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[2] The statute, in pertinent part, reads as follows:

> "Payments of benefits due or to become due under any law administered by the Veterans' Administration shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to claims of the United States arising under such laws nor shall the exemption therein contained as to taxation extend to any property purchased in part or wholly out of such payments. * * *"

[fol. 62] "We think it clear that the committee's accounts in the federal savings and loan associations were investments subject to the claims of creditors."[3]

Appellant respectfully submits that this conclusion was necessarily predicated upon the controlling Supreme Court decisions. In *McIntosh* v. *Aubrey*, 185 U.S. 122, 46 L. ed. 834, 22 S.Ct. 561, and *Trotter* v. *Tennessee*, 290 U.S. 354, 78 L. ed. 358, 54 S.Ct. 138, the Court laid it down that the exemption does not extend to land purchased with the benefits. Moreover, in *Carrier* v. *Bryant*, 306 U.S. 545, 83 L. ed. 976, 59 S.Ct. 707, the Court further held that the exemption did not extend to negotiable notes or United States bonds so purchased. And it is vital to note that, with regard to cash in bank, while the Court held that cash on deposit in an ordinary checking account, bearing no interest and subject to withdrawal on demand, is exempt, it was also at pains to point out that cash on deposit could, under certain circumstances, "assume the character of investments." *Lawrence* v. *Shaw*, 300 U.S. 245, 81 L.ed. 623, 57 S.Ct. 443, 108 A.L.R. 1102.

The State Courts have not been hesitant in following the obvious thrust of the Supreme Court decisions. Representative cases are cited in Appellant's Brief; with a view to brevity, only the most recent will be noticed here. This is *Hale* v. *Gravellese*, 166 N.E. 2d 557, s.c., 162 N.E. 2d 817, 1960. There, the Supreme Judicial Court of Massa- [fol. 63] chusetts unanimously held that a veteran's funds deposited by his Committee in a savings account constituted an investment and were not exempt from the claims of a creditor.[4]

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[3] In *Wisconsin Bankers Association, et al.* v. *Robertson, et al.*, decided on the same day as the instant proceeding, this Court (per Miller, Chief Judge, with Bazelon and Burder, Circuit Judges, concurring), said that: "We recently held that a 'share' in a federal savings and loan association is an investment and is not equivalent to the deposit of money in a bank. *Aetna Casualty and Surety Co.* v. *Porter*, No. 16,066, decided this date."

Textual comment, and other cases in accord with the view of the Majority at bar, will be found in *American Law of Veterans*, 2nd Ed., 1954, s 43 *et seq.*

[4] The question is one of first impression in this Circuit. Although this Court has previously held that cash on deposit in

In concluding that a 'share' in a federal savings and loan association is an investment, and "is not equivalent to the deposit of money in a bank," the Majority of the Court in the instant appeal emphasized the several determinative distinctions between a depositor in a bank and a share owner in a savings institution. As the Majority pointed out, the investor in a share account is not entitled to his funds on demand, as is the bank depositor,[5] and the investment depositor (unlike the depositor in an ordinary checking account) does not become a creditor of the bank.

In his Petition for Rehearing, the Appellee complains that the Majority of this Court "did not rule upon the fundamental and basic issues in the case," which, he says, is as to whether or not "funds which have not changed their identity" are exempt. The vice inherent in this accusation is, of course, that it completely ignores the dispositive finding of the Majority, i.e., that the funds in question, when changed from the form of cash in bank to investment shares in savings institutions, in legal fact changed their identity and, hence, lost the benefit of the exemption.

[fol. 64] Moreover, the Appellee twice suggests that the purchase of the share accounts was "instructed by the Court" on "order of court." The record does not sustain this assertion. A study of the Appellee's Mental Health File (No. 1714-52) reveals that, upon several occasions, the Auditor recommended that "surplus" cash be transferred from the checking account to share accounts in the

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an ordinary checking account is exempt (*Williams* v. *United States Fidelity & Guaranty Co.*, 71 App. D.C. 9, 107 F. 2d 210, cf. *District of Columbia* v. *Reilly*, 102 U.S. App. D.C. 9, 249 F. 2d 524) which is, of course, the accepted rule as to accounts of this type, this Court had never had the instant problem actually before it for decision, prior to the present proceeding.

[5] The Appellee insists, and the dissenting Judge noted, that as a matter of custom, investors in savings and loan associations in this area are permitted to make withdrawals on demand. Appellant submits, however, that what is ultimately controlling on this issue is not what may be done as a matter of custom or convenience, but, rather, what can be required and enforced as a matter of contractual right between the parties.

savings institutions, which the Committee did after pro forma approval of the Auditor's report by the Court. It also appears that, prior to Porter's trial on the murder charge, his counsel thought it advisable to obtain the in-court testimony of two psychiatrists who were no longer in this area, and for this purpose a substantial withdrawal from an investment account was authorized by the Court. As it turned out, the doctors were not brought into court to testify, and the funds were thereafter re-invested in the association. It is respectfully submitted that the contention that Appellee's Committee was "instructed" or "ordered" by the District Court to invest the funds in the savings institutions is not accurate and, in any event, is not germane to the issue here presented.

The dissent filed by Judge Prettyman does not, in matter of fact, differ with the Majority in their interpretation of the statute. The dissenting Judge would, rather, resolve the problem by a factual inquiry, via testimony from the Committee, as to how much of the assets on hand are actually needed for the upkeep of the veteran. Such amount would be declared to be "current deposits," *i.e.*, immune from seizure, while the residue would be denominated "investments" and available to a creditor. With utmost respect to Judge Prettyman, there would seem to be a fundamental difficulty inherent in this approach, it being apparent that there is no statutory authorization for such a procedure. The entire subject of veterans' benefits is, generically, one of legislative creation, and Appellant respectfully submits that any implementation or amplification of the Congressional mandate must be achieved by the legislature itself or, at the very least, through its delegate, the Administrator of Veterans Affairs, under proper authorization.

It is respectfully submitted that the Majority of this Court correctly interpreted the exemption statute and the [fol. 65] controlling decisions of the Supreme Court construing it, and that the Petition for Rehearing En Banc should be denied.

Respectfully submitted,

JOHN L. LASKEY
RICHARD WHITTINGTON WHITLOCK
509 Albee Buildjng
Washington 5, D. C.
Attorneys for Appellant

CERTIFICATE OF SERVICE
(omitted in printing)

[fol. 66] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[Title omitted]

Before: Wilbur K. Miller, Chief Judge, Edgerton, Prettyman, Bazelon, Fahy, Washington, Danaher, Bastian and Burger, Circuit Judges, in Chambers.

ORDER DENYING PETITION FOR REHEARING EN BANC—
August 21, 1961

Upon consideration of appellee's petition for a rehearing en banc, it is

ORDERED by the court that the petition for rehearing en banc is denied.

Per Curiam.

[fols. 67-68] • • • •

[fol. 69] Clerk's Certificate to foregoing transcript omitted in printing

[fol. 70]

SUPREME COURT OF THE UNITED STATES

No. 549 Misc., October Term, 1961

HARRY CLIFFORD PORTER, PETITIONER

vs.

AETNA CASUALTY AND SURETY COMPANY

ON PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the District of Columbia Circuit.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI—December 11, 1961

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 604 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1962 624820 803

No. 604

In the Supreme Court of the United States

OCTOBER TERM, 1961

HARRY CLIFFORD PORTER, PETITIONER

v.

AETNA CASUALTY & SURETY COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 604

HARRY CLIFFORD PORTER, PETITIONER

v.

AETNA CASUALTY & SURETY COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINIONS BELOW

The opinion of the District Court for the District of Columbia (R. 27-31) is reported at 185 F. Supp. 302. The opinion of the Court of Appeals for the District of Columbia Circuit (R. 47-54) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals for the District of Columbia Circuit was entered on July 13,

1961 (R. 55). A timely petition for rehearing *en banc* was denied on August 21, 1961 (R. 65). The petition for certiorari was filed on September 18, 1961, and granted on December 11, 1961 (R. 66). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether disability benefits paid by the United States to an incompetent veteran and deposited by his guardian in an account in a federal savings and loan association are exempt from attachment under 38 U.S.C. 3101(a).

STATUTE INVOLVED

Section 3101 of Title 38 U.S.C. provides, in pertinent part, as follows:

> (a) Payments of benefits due or to become due under any law administered by the Veterans' Administration shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to claims of the United States arising under such laws nor shall the exemption therein contained as to taxation extend to any property purchased in part or wholly out of such payments. The provisions of this section shall not be construed to prohibit

the assignment of insurance otherwise authorized under chapter 19 of this title, or of servicemen's indemnity.

* * * *

STATEMENT

Harry Clifford Porter, the petitioner, is an incompetent veteran of the United States armed forces whose estate, insofar as it is in issue here, is derived solely from payment by the United States of disability benefits for a service-connected disability (R. 12). In 1952, while still a non-commissioned officer in the Air Force, Porter was indicted for murder but was acquitted by reason of insanity and committed to St. Elizabeths Hospital (R. 48). The murder victim's administratrix brought a wrongful death action against certain individuals insured by respondent Aetna Casualty and Surety Company, which suit was ultimately settled by the respondent (R. 48). Thereafter, under the subrogation provisions of its policy, the respondent sued and obtained an indemnity judgment against Porter (R. 48).

Upon receipt of this indemnity judgment, Aetna attached the checking account of Porter's committee and also the accounts in two federal savings and loans associations [1] which also stood in the name of the com-

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[1] The two associations involved are the Columbia Federal Savings and Loan Association and the Prudential Building Association (R. 6-7, 9-10). Accounts in both associations are insured up to $10,000 by the Federal Savings and Loan Insurance Corporation (R. 24, 33, 35). At the time of Aetna's attachment pursuant to its judgment, Porter's

mittee (R. 48, 2-3, 4, 6). These accounts were established and augmented by Porter's committee solely from payments to Porter received under disability compensation laws administered by the Veterans Administration (R. 12, 48-49). On petitioner's motion, the district court quashed the attachments except as to dividends aggregating $869.84 which had been added to the accounts in the federal associations [2] (R. 31-32).

The district court's decision was based on its ruling that under the provisions of 38 U.S.C. 3101(a), *supra*, pp. 2-3, benefits paid to a veteran and deposited in a savings account are exempt from attachment. Following the guidelines provided by this Court in three decisions interpreting this exemption statute,[3] the district court held that benefits deposited in a savings account are not "permanent investments" [4] of the type this Court had held beyond the ambit of protection afforded by the exemption provisions. In light of the purposes of the Act the district court found no dis-

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accounts, including dividends, amounted to $5,791.20 in Columbia Federal Savings and Loan Association and $3,078.63 in Prudential (R. 11, 27, 32).

[2] Petitioner did not appeal the District Court's ruling on the dividends. Similarly, the respondent did not challenge on appeal the lower court's ruling on the checking account. Hence, the funds represented by the dividends on the savings and loan deposits and those in the checking account are not in issue here.

[3] *Trotter* v. *Tennessee*, 290 U.S. 354; *Lawrence* v. *Shaw*, 300 U.S. 245; *Carrier* v. *Bryant*, 306 U.S. 545. These decisions are discussed in detail in the Argument, *infra*, pp. 11-14.

[4] *Trotter* v. *Tennessee*, 290 U.S. at 357.

tinction as to monies deposited in a savings account in a bank or those deposited, as here, in a savings account in a federal savings and loan association (R. 27-31).

The court of appeals, by a divided vote, reversed. The majority (Miller, C.J. and Burger, J.) held that, since the committee maintained a checking account for the veteran, the funds deposited in the savings accounts were not for immediate needs and consequently lost the protection of the exemption provision. In reaching this conclusion, the majority also relied on its view that savings deposits in a savings and loan association, unlike such deposits in a bank, represent investments not entitled to immunity from attachment (R. 47-52). The dissenting judge (Prettyman, J.) believed that the formal, legal distinctions between a savings account in a bank and one in a savings and loan association should not be dispositive. In his opinion, the significant question under the exemption statute is an issue of fact—to what uses are such funds, whether deposited in a bank or an association, actually put. Since the record here was not adequate to resolve this factual determination, he would have remanded the case for amplification on this issue (R. 53-54).[5]

SUMMARY OF ARGUMENT

Disability compensation payments made by the Veterans Administration to petitioner, and deposited on his behalf by his committee in savings accounts

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[5] Porter subsequently filed a petition for rehearing *en banc* which was denied (R. 56-65).

in federal savings and loan associations, are exempt from attachment under the provisions of 38 U.S.C. 3101(a).

A. The Act provides that the exemption applies to all payments of benefits under any law administered by the Veterans Administration "either before or after receipt by the beneficiary". The tests or standards to be applied in determining whether the particular form of retention of the benefit payments is entitled to exemption have been established in three prior decisions of this Court on the veterans' exemption provisions of the federal law. *Trotter* v. *Tennessee*, 290 U.S. 354; *Lawrence* v. *Shaw*, 300 U.S. 245; *Carrier* v. *Bryant*, 306 U.S. 545. The prerequisites for exemption enunciated in those decisions are (1) that the form of retention constitute a usual or normal method of retaining monies to meet the demands of maintenance and support; (2) that the benefit monies are not used for a purchase of property, thereby losing the quality of monies; and (3) that the benefit monies are not utilized for *permanent* investments in land, merchandise, or securities.

B. Under all three tests, benefit monies deposited in a savings account, as was the case here, are exempt from attachment. The Court has held that monies deposited in a checking account are exempt; such a deposit represents a normal mode of retention to meet the veteran's needs as they arise. *Lawrence* v. *Shaw*, *supra*. By the same token, benefit monies placed in a savings account are normally available and are used for the veteran's and his family's maintenance and support, even if the needs and obliga-

tions met by withdrawals from savings recur or occur less frequently than those to be met by checking. Moreover, monies placed for savings are not a conversion of the benefits into property in the sense intended in this Court's prior decisions; these monies, like those deposited in a checking account, are normally available as such on demand and never "los[e] the quality of moneys". *Trotter, supra*, 290 U.S. at 356. Nor are monies deposited in a savings account excluded from statutory protection as *permanent* investments. As this Court held in *Lawrence, supra*, the fact that a deposit may earn interest is not enough to place it beyond the ambit of immunity.

C. The conclusion that monies in a savings account are exempt is not affected by the fact that the accounts here were in federal savings and loan associations rather than in a bank. It is true that the depositor in a federal association is technically a shareholder rather than a creditor (like a depositor in a bank), but the pertinent similarities between the two types of deposits are dispositive with regard to the issue of exemption under the statute. Both savings devices are ordinarily used in the same fashion for maintenance and support, both represent no real conversion of money into property, and neither is a permanent investment of the type barred from immunity under this Court's previous decisions in this area.

ARGUMENT

Veterans' Disability Benefits, Deposited in a Savings Account in a Federal Savings and Loan Association, Are Exempt from Attachment Under 38 U.S.C. 3101(a)

A. *The Standards of Interpretation of the Exemption Provision Are Established by Prior Decisions of This Court.*

Section 3101(a) of Title 38 U.S.C.[6] is the most recent enactment in a line of legislation, dating from 1873, extending immunity from taxation and legal process to the benefits paid to veterans and to other beneficiaries under laws administered by the Veterans Administration.[7] It provides, in pertinent part, that such benefits "shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever * * *." *Supra*, pp. 2-3. The immunity extends to the payment of such benefits "either before or after receipt by the beneficiary".[8] By way of exception, however, the statute provides that the exemption does not apply to "any property purchased in part or wholly out of such payments".[9]

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[6] Act of September 2, 1958, 72 Stat. 1229.

[7] Act of March 3, 1873, Rev. Stat. § 4747 (1878); World War Veterans' Act of 1924, c. 320, § 22, 43 Stat. 607, 613; Act of August 12, 1935, c. 510, § 3, 49 Stat. 607, 609.

[8] This language, expressly applying immunity to payments of benefits even after receipt by the beneficiary, was incorporated for the first time in the 1935 statute, *supra*, 38 U.S.C. (1952 ed.) 454a.

[9] While the statutory provision reads only that the exemption "contained as to taxation" shall not extend to property

The issue posed by this case is whether benefits paid to an incompetent veteran, which upon receipt are kept on his behalf in a savings account in a federal savings and loan association, are exempt from attachment within the meaning and in view of the underlying purposes of this legislation. At the outset, we take note of the liberal construction traditionally and consistently given to legislation, such as this, affording benefits to veterans. In addition, before discussing this particular case, we examine the three prior decisions of this Court and the rulings of state courts with regard to this exemption statute in order to ascertain the purposes of the legislation and the proper and controlling standards to be applied in interpreting it.

1. Section 3101(a), like all legislation conferring benefits on veterans, must be liberally construed. *E.g.*, *Trotter* v. *Tennessee*, 290 U.S. 354, 356; *Hoeppel* v. *Westover*, 79 F. Supp. 794 (S.D. Cal.); *Yake* v. *Yake*, 170 Md. 75, 183 A. 555; *Mixon* v. *Mixon*, 203 N. Car. 566, 166 S.E. 516; *Surplus* v. *Remmele*, 194 Misc. 1036, 87 N.Y.S. 2d 651 (County Ct., Broome Cty.).[10] This Court stated in *Trotter*, *supra*, that the exemption provision was "not to be read so grudgingly as to thwart the purpose of the law-

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purchased in whole or in part out of the benefit payments, this Court has held that the exemption as to creditors' claims similarly does not extend to such purchases. *Carrier* v. *Bryant*, 306 U.S. 545, 547.

[10] See, also, *Derzis* v. *Vafes*, 227 Ala. 471, 150 So. 461; *Rucker* v. *Merck*, 172 Ga. 793, 159 S.E. 501; *Wilcox* v. *Wynn*, 83 N.E. 2d 411 (Mun. Ct., Ohio).

makers". 290 U.S. at 356. In the same vein, a state court, interpreting the veterans' exemption provisions, has observed that "[t]he statute should be construed broadly in favor of disabled soldiers in order that the purpose and intent of the act might be fulfilled". *Yake* v. *Yake, supra,* 170 Md. at 77-78. The solicitude of Congress for veterans, exemplified here, is of long standing and is reflected in many different benefits. See, *e.g., United States* v. *Oregon,* 366 U.S. 643, 647.

The basic purpose of this exemption legislation, moreover, as with comparable legislation for the immunity of similar types of benefits,[11] is to provide generally for the maintenance and support of the group of beneficiaries protected, without which they might become impoverished. *Lawrence* v. *Shaw,* 300 U.S. 245, 250. The benefits protected by 38 U.S.C. 3101(a) are those paid under laws administered by the Veterans Administration, here disability compensation, in other instances pensions, retirement pay, death benefits, or insurance proceeds. Payment of the particular benefit represents, of course, the grateful appreciation of the country for the veteran's military service. Establishment of immunity for such benefits reflects the further legislative recognition that these

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[11] There are many type of exemption provided by state law, dealing with protection of such funds as insurance proceeds, disability benefits, wages, etc. The judicial holdings as to the limits of these exemptions form no consistent pattern, the variations depending on differences in the statutory language or in interpretations of legislative purpose. For a collection of the cases, see, *e.g.,* 35 Corpus Juris Secundum, § 26-62, pp. 525-584.

benefits are not, in the main, unrelated to need but rather serve to maintain the veteran and his family, and consequently should be kept inviolate for that paramount purpose.

As stated by a lower New York court in *Surplus* v. *Remmele*, *supra*, "[t]he plain purpose of the act was to promote the comfort of the soldier; to secure to him the bounty of the government free from the claims of creditors; and to insure him *and his family* a safe, although modest, maintenance so long as their needs required it". 194 Misc. at 1039, 87 N.Y.S. 2d at 654. The Maryland court in *Yake* v. *Yake*, explained the legislative purpose in this way (170 Md. at 77, 183 A. at 556):

> The manifest intention of Congress in incorporating this provision in this act was to guard those unfortunates * * * from imposition of others or the depletion of their maintenance and support by their own improvidence, and to assure to them a certain subsistance.[12]

While affording the veteran and his family this modicum of maintenance and support, the statutory immunity also lessens the possibility that the beneficiaries will become public charges. *Derzis* v. *Vafes*, *supra*; cf. *In re Flanagan*, 31 F. Supp. 402 (D.D.C.).

2. This is not the first time an issue involving the veterans' exemption provisions has been presented to this Court. On three prior occasions, the Court has interpreted the statutes preceding 38 U.S.C. 3101

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[12] See also, *e.g.*, *Derzis* v. *Vafes*, 227 Ala. 471, 150 So. 461; *Elbert Sales Co.* v. *Granite City Bank*, 55 Ga. App. 835, 192 S.E. 66; *In re Flanagan*, 31 F. Supp. 402 (D.D.C.).

(a), which were essentially similar to the present Act, and has established the standards and criteria controlling adjudication. See *Trotter* v. *Tennessee*, 290 U.S. 354; *Lawrence* v. *Shaw*, 300 U.S. 245; *Carrier* v. *Bryant*, 306 U.S. 545.

In *Trotter*, *supra*, the question was whether land and buildings purchased on behalf of an incompetent veteran with disability benefits paid to him by the Veterans Administration were exempt from taxation under Section 22 of the World War Veterans Act.[13] The Court held two considerations dispositive in reaching its decision that the exemption did *not* extend to the land and buildings purchased with benefit monies. The first was that "there was an end to the exemption when [the benefit monies] lost the quality of monies and were converted into land and buildings." 290 U.S. at 356. Equally significant as a determinative factor was the Court's view that the immunity did not extend to "*permanent* investments or the fruits of business enterprises" (emphasis added). 290 U.S. at 357. The Court emphasized that (*ibid.*):

> Veterans who *choose to trade* in land or in merchandise, in bonds or in shares of stock, must pay their tribute to the state [emphasis added].

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[13] Act of June 7, 1924, 43 Stat. 607, 613. That Act provided in pertinent part:

> * * * the compensation, insurance, and maintenance and support allowance payable * * * shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made * * *; and shall be exempt from all taxation: * * *

Four years later, in 1937, these exemption provisions were once more before the Court on the issue of whether benefits paid an incompetent veteran for disability compensation and insurance, and deposited by his guardian in a checking account [14] in a bank, were exempt from local taxation.[15] *Lawrence* v. *Shaw*, 300 U.S. 245. Noting that the basic purpose of the statute was the maintenance and support of the veteran (300 U.S. at 250), the Court reiterated the criteria for exemption established in *Trotter*, *viz*, (1) that the benefits must be substantially identifiable as monies and (2) that they must not be converted into "permanent investments or the fruits of business enterprises" (300 U.S. at 248, 250). Measured by these criteria, monies in a checking account are plainly exempt, and the Court so held. "[N]either [the veteran] nor his guardian is obliged to keep the moneys on his person or under his roof". 300 U.S. at 250. Since the immunity continues under the Act until after receipt of benefits, "the *usual methods of receipt* must be deemed available so that the amounts

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[14] While it is not absolutely clear from the opinion whether it was a checking account, this would appear to have been the case. The issue was presented on a stipulation of fact merely describing the funds as "deposits in banks" (300 U.S. at 247, fn. 4). The Court, however, described the funds as being subject to draft, and it did not appear to the Court that there was any allowance of interest (300 U.S. at 250).

[15] Exemption was claimed under the 1924 Act, *supra*, and under the Act of August 12, 1935, § 3, 49 Stat. 607, 609, 38 U.S.C. (1952 ed.) 454a. The Court's decision was based on the 1935 Act which, in pertinent part, is almost identical with 38 U.S.C. 3101(a).

paid by the Government may be properly safeguard d and used as the needs of the veteran may require" (*ibid.*; emphasis added). Further, the Court, while noting that some bank deposits "under a special agreement" might be the type of permanent investment outside the ambit of immunity, went on to state that "we do not suggest that a mere allowance of interest upon deposits would be enough to destroy an immunity where it would otherwise attach" [16] (300 U.S. at 250).

In the third decision, in 1939, *Carrier* v. *Bryant*, 306 U.S. 545, the Court held that negotiable notes and United States bonds purchased out of benefit payments made to an incompetent veteran were not exempt from the claims of creditors under the 1935 Act. The decisive factors again were those set forth in *Trotter*, *i.e.*, (1) the conversion of the benefit monies into something not retaining the essential "quality of moneys" and (2) the conversion of the benefits into something going beyond maintenance and support—into "permanent investments or the fruits of business enterprises" (306 U.S. at 549).

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[16] The only "special agreement" we can think of which the Court might have had in mind as depriving the veteran of the benefits of immunity would be a trust fund agreement whereby the bank would invest the monies on deposit on behalf of the depositor. See *e.g.*, note, *Exemption of Income from Property Purchased with Exempt Insurance Proceeds*, 47 Yale L. J. 1408.

B. *Under These Standards, Veterans' Benefits Deposited in a Savings Account Are Exempt from Attachment under 38 U.S.C. 3101(a).*

1. The controlling standards of exemption established in the decisions just discussed, when applied to the instant case, demonstrate that petitioner's benefit monies deposited in a savings account come within the protective scope of 38 U.S.C. 3101 (a).[17] These monies were used for petitioner's maintenance and support; they have not been translated into property but are readily identifiable as monies; and they do not fall into the area of "permanent investments", which this Court has held to be beyond the protection of the exemption.

(*a*). In reaching the contrary result, the court below gave considerable weight to its belief that, because Porter's committee maintained and used a checking account for certain of the ward's immediate needs, the benefits deposited in the savings accounts were presumptively unnecessary for maintenance and support[18] (R. 51-52). This approach adopts a concept of maintenance and support that is unduly re-

[17] For purposes of our argument in this Point—that the exemption applies to benefit monies in a savings account—the assumption is that the exemption applies regardless of whether the account is in a savings bank, commercial bank, or in a savings and loan association. In Point C, *infra*, we show that the distinctions between these accounts are not such as to require or warrant different treatment under this statute.

[18] The court concluded that, by leaving some money in the checking account and placing the rest in the savings account to earn some income, Porter's committee considered the savings deposits "to be surplus income over and above ordinary and necessary expenses" (R. 52)

strictive and unrealistic in the light of present-day checking and savings account practices. In furnishing benefit payments and protecting them from creditors' suits and from taxation, Congress did not extend the shield of immunity only to government-derived funds maintained in a checking account and used to meet monthly obligations that veterans and their families regularly incur. Savings accounts are also ordinarily used for the payment of various types of obligations which are properly characterized as maintenance and support even though they may occur or recur less frequently than obligations met by a checking account. Schooling, a down payment on a home or an automobile, the purchase of furniture, the payment of emergency medical bills, taxes, death and funeral expenses—these are but a few examples of ordinary obligations which are often not met with funds in a checking account. They are expenditures for present day necessities of life. In common experience they are often made, at least in part, out of modest accumulations in savings accounts on which interest is paid or dividends accrue. While such accounts may be technically classified as investments, it seems clear that they are not the type of "permanent investments" to which this Court referred in *Trotter* v. *Tennessee*, 290 U.S. at 357. See *infra*, pp. 19-23.

Moreover, the necessary holding of the court below is that the protective reach of the statute extends only to benefit monies kept under one's roof, on one's person, or in a checking account. Such a conclusion runs counter to the present day practice of thrift

and saving, virtues which have been long extolled and are everywhere encouraged. From the child who saves by bringing in some small deposit to school to the wage earner who prudently places in a checking account only an amount necessary to meet frequently recurring obligations, and saves the rest for "the rainy day," the people of this country, including those receiving veterans benefits, use savings as a normal method of receipt and retention of monies. As this Court concluded in *Lawrence* v. *Shaw*, 300 U.S. at 249, 250, exemption under this Act applies to the "usual methods of receipt" which "must be deemed available so that the amounts paid by the Government may be properly safeguarded and used as the needs of the veteran may require".

To draw the protective line at checking accounts tends to defeat the purpose of the statute to preserve the means disbursed for the beneficiary's maintenance and support and the necessities of life today. While checking may be a more expeditious method of paying current debts than withdrawals from a savings account, it is an equally expeditious way of wasting money which ought to be accumulated for longer-range necessities. See, *e.g.*, *Rucker* v. *Merck*, 172 Ga. 793, 159 S.E. 501. And yet, under the decision below, to obtain immunity under 38 U.S.C. 3101 (a), a woman receiving widow's benefits under veterans' legislation must keep those monies, perhaps intended as a source of maintenance and independence in later life, either on her person, under her roof, or in a checking account. The benefits paid on behalf of a child, perhaps intended in large part for later

schooling, must be similarly treated. We need not belabor the point that such practices, in lieu of utilizing the normal mode of a savings account, could lead to an improvidence which Congress would hardly have sought to encourage. See *e.g.*, *Yake* v. *Yake*, 170 Md. 75, 183 A. 555; *Rucker* v. *Merck*, *supra*.

Nor does the decision below take realistic account of the maintenance and support requirements of the incompetent veteran, like the present petitioner, institutionalized by reason of his service-connected disability. The maintenance and support requirements of such a veteran cover both the period of confinement and the period when, if rehabilitation is possible, he may be released to attempt to readjust as a normal member of society. If his disability payments will lose immunity simply because his committee or guardian believes at least part of these payments are not necessary for immediate expenses and should earn a little income in a savings account, the veteran's ability to fall back on such funds upon release is undermined. Such a result cannot be ascribed to Congress merely because benefit monies were placed in a savings rather than a checking account.[19]

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[19] It should be noted, in this connection, that since 1958 compensation payments to an incompetent veteran, institutionalized in a federal or state institution and without wife or child, like Porter, are discontinued if his estate exceeds $1500, and are resumed again only when his estate is reduced to $500 or less. 38 U.S.C. 3203(b). Thus, in most instances, if the incompetent veteran's relatively small estate is nonexempt, by virtue of being deposited in a savings account, he may have very little in the way of savings to face readjustment upon release.

(*b*). Aside from assuring the availability of funds for the basic maintenance and support of veterans and their families (the essential reason for the enactment of the exemption), benefit funds deposited in a savings account meet the two other standards for exemption established by this Court in *Trotter*— (1) they retain their essential quality as monies and do not represent a real conversion into property, and (2) they do not reflect "permanent investments" going beyond the normal retention of funds for maintenance and support. In *Trotter*, as we have noted, the Court ruled that the statutory exemption ended when the benefits "lost the quality of moneys and were converted" into property. 290 U.S. at 356. See, also, *Elbert Sales Co.* v. *Granite City Bank*, 55 Ga. App. 835, 192 S.E. 66. Thus, in *Trotter*, the purchase of land and buildings, and in *Carrier* v. *Bryant*, the purchase of negotiable notes and bonds, represented a real conversion of the benefit monies, a purchase of property; consequently, the property purchased was held beyond the ambit of protection under the provision of the statute excepting purchased property from the exemption (see *supra*, pp. 12, 14). On the other hand, where the moneys were deposited in a checking account (in *Lawrence* v. *Shaw*) the Court held that the exemption applied, and by implication that no purchase of property had occurred as in the other two cases. Accord: *Williams* v. *United States Fidelity & Guaranty Co.*, 107 F. 2d 210 (C.A. D.C.).

In the case at bar, it seems clear that the uninvested benefit monies deposited in a savings account have

not "lost the quality of moneys" (*Trotter, supra* at 356), and do not reflect any conversion into property within the meaning of the statute and this Court's definition of that standard. The monies represented by the deposits are easily traceable and are readily available for withdrawal regardless of the right of either a bank or federal savings and loan association to defer payment for a short period of time.[20] The only real differences between a savings account depositor and a checking account depositor are that the former draws a little interest or dividend on his account and has to present his passbook for withdrawal of funds, rather than write a check. Those minimal differences are not, we submit, sufficient to deprive benefit proceeds of their identity when placed in a savings account.[21]

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[20] We show in Point C, *infra*, that the fact that a depositor in a savings and loan association is, for certain legal purposes, a shareholder rather than a creditor, which is the relationship of a depositor to a bank, does not affect our position that, for the purposes of the exemption statute, he has not converted his benefits into property.

[21] Even in the case of certain purchases of property from benefit proceeds, the statutory immunity is not lost (in our view), *i.e.*, with respect to purchases of food, clothing and other ordinary and necessary needs that Congress was making possible by means of its disbursement. While different types of purchases might present questions of fact, in line with Judge Prettyman's reasoning in his dissenting opinion below (R. 53-54), we do not believe that such a factual question is presented as to a savings account which should be considered, as a matter of law, a normal mode of retention of funds (*Lawrence, supra*, at 249) always available for purposes of maintenance and support and therefore always exempt. See the discussion, *infra*, pp. 23-25.

Neither do these insubstantial differences place savings accounts in the category of "permanent investments" while checking accounts retain their immunity under the rule of *Lawrence* v. *Shaw*, *supra*. The court below placed great reliance on the fact that these deposits draw interest or dividends and are technically share accounts in the savings and loan associations; for this reason, the court felt that the deposits fall into the category of investments and thus are not exempt (R. 51-52). The mistake lies in emphasizing an abstract, fixed definition of the term "investment", a word which does not even appear in the statute. "Investment" must be interpreted in the context in which the Court actually used the word, not as it might be read in other fields to which other considerations are applicable.[22]

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[22] Emphasis on the abstract term "investment", without examination of the basic statutory purpose of maintenance and support and of this Court's restricted use of the term in *Trotter*, led the court below to rely on the fact that Porter's committee deposited the funds in issue pursuant to Rule 23 of the Rules of the District Court providing for "investment" of trust funds (R. 51). As the District Court pointed out, however (R. 29), seizing on this word in the rule does not provide an answer to the question under 38 U.S.C. 3101(a).

The same sort of emphasis has led two state courts to reach decisions consistent with the majority ruling below with regard to savings bank deposits. *In re Bowen*, 141 Ohio St. 602, 49 N.E. 2d 753; *Hale* v. *Gravallese*, 340 Mass. 96, 162 N.E. 2d 817; 340 Mass. 722, 166 N.E. 2d 557.

While it is not certain from the opinions whether savings or checking accounts were involved, at least five other state courts have held that bank deposits are exempt under these statutory provisions. *Derzis* v. *Vafes*, 227 Ala. 471, 150 So. 461; *Wilson* v. *Sawyer*, 177 Ark. 492, 6 S.W. 2d 825;

The word was used by the Court for the first time in this connection in *Trotter*, not to exclude from exemption any disposition of benefits which might be classified as a technical investment, but only to exclude "permanent investments" not commonly regarded as sources of maintenance and support, such as an investment in land or buildings. The Court noted that exemption should not be extended to the trader in property who was utilizing the benefit proceeds beyond the normal and customary modes of receipt and retention. And, in *Lawrence*, the Court held that the usual methods of receipt and retention of monies should be immunized. In that same opinion, the Court, in commenting on bank deposits, stated that "we do not suggest that a mere allowance of interest upon deposits would be enough to destroy an immunity where it would otherwise attach" (300 U.S. at 250).

Under these standards, a savings account is not a "permanent investment" utilized by one trading in property. In the United States, today, it has become, as we have noted, a usual method of receipt and retention of monies for maintenance and support. The mere allowance of interest on the deposit, as this Court stated in *Lawrence* v. *Shaw*, should not control to destroy immunity. If, as held in *Lawrence*, Congress intended to immunize proceeds deposited in a checking account, that intention reasonably extends to the proceeds in a savings account as well. This

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Payne v. *Jordan*, 152 Ga. 367, 110 S.E. 4; *Elbert Sales Co.* v. *Granite City Bank*, 55 Ga. App. 835, 192 S.E. 66; *Speer* v. *Pierce*, 18 Tenn. App. 351, 77 S.W. 2d 77.

result should obtain unless the provisions of 38 U.S.C. 3101(a) are to be read "so grudgingly as to thwart the purpose of the lawmakers" (*Trotter*, 290 U.S. at 356).

2. While we agree with that part of the dissenting opinion below which is critical of the majority for basing its decision on a fixed concept of the term "investment", we do not agree with Judge Prettyman's view that exemption of savings accounts should be dependent upon a factual demonstration that the funds have been set aside to meet contemporary or anticipated needs for maintenance and support (R. 53-54).

This proposed approach ignores the almost universal need and desirability for savings to meet, according to contemporary mores, the real demands of maintenance and support. As we have indicated, a generally accepted practice is to set aside in savings whatever amount one can to meet future but inevitable contingencies. The factual inquiry suggested by Judge Prettyman would not, it would seem, add much enlightment. The testimony reasonably to be expected is that a savings account is available for any need not covered by a checking account (or by funds on hand)—thus satisfying the maintenance and support test that should be applied.[23]

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[23] If a factual inquiry as to intended use is necessary, this Court presumably would have ordered one in *Lawrence v. Shaw*, since even a checking account, in a given case, might not be drawn upon any more frequently for maintenance and support than monies in a savings account.

Moreover, the requirement of a trial as to the actual or intended use of the monies in a savings account would tend to eliminate the very benefits which Congress was endeavoring to protect through the exemption statute. Such litigation in the case of the numerous beneficiaries who may have savings accounts in which they deposit sums from benefit payments would eat into those benefits through attorneys' fees and other litigation expense.[24] Though there are doubtless some beneficiaries who are sufficiently affluent that they do not contemplate drawing upon savings accounts for maintenance and support, the fact is that creditors of this class of individuals would likely have recourse to other non-exempt assets. In any event, it is fair to assume that beneficiaries in this category are in such a distinct minority that their existence would provide a most insubstantial reason for requiring case by case determination of the immunity of savings accounts. Congress can properly be taken to have considered that the vast majority of the beneficiaries under laws administered by the Veterans Administration would have normal recourse to savings for necessary expenditures

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[24] As noted in the memorandum for the United States as *amicus curiae* in this case, the exemption question presented here may potentially affect the 12 million recipients of billions of dollars in benefits disbursed annually under laws administered by the Veterans Administration. Approximately 460,000 of these (of whom 105,200 are incompetent veterans) are under legal disability. We are advised by the Veterans Administration that, as of June 30, 1961, these beneficiaries had estates in excess of $750,169,000, nearly all of which was derived from veterans benefits.

and thus to have immunized the entire class, just as checking accounts as a class are immune. It is preferable to base the status of a type of account, as exempt or not exempt, on an objective evaluation of the general purposes and uses of the device rather than to require an investigation in each individual case into the particular treatment by that particular person of his particular account.

C. *Benefit Monies Deposited in a Savings Account in a Federal Savings And Loan Association Are Likewise Exempt under 38 U.S.C. 3101(a).*

The court below, in holding that petitioner's savings accounts are not exempt under the Act, relied in part on the view that, even if a savings account in a bank is exempt, a savings account in a federal savings and loan association is not exempt. The differences between these two types of accounts, however, are technical and legal and are far outweighed by their similarities when the issue is viewed from the perspective of the benign legislative purpose of this Act. Savings accounts in banks and those in federal savings and loan associations stand on the same footing with respect to the aim of protecting maintenance and support benefits, as well as the two criteria for this exemption heretofore established by this Court: (1) the prerequisite that the benefits do not lose their quality as monies and (2) that no permanent investment is involved.

The pertinent similarities between the two types of savings accounts are plain. Both are called savings accounts, they are advertised and are commonly

understood as such[25] (R. 53, 26). Both types of savings accounts, the account in the commercial or savings bank and its counterpart in the federal savings and loan association, are insured against loss up to $10,000—in the case of the bank by the Federal Deposit Insurance Corporation and in that of the association by the Federal Savings and Loan Insurance Corporation. While both the bank and federal savings and loan association may defer payment on withdrawal by a depositor for a stated period of time, both, as a matter of practice, normally pay on demand[26] (R. 53, 26).

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[25] Cf. *Wisconsin Bankers Association* v. *Robertson*, 294 F. 2d 714 (C.A. D.C.), certiorari denied, 368 U.S. 938, where, in his concurring opinion, Judge Burger acknowledged that "these associations are indeed coming to be regarded by the public much as the equivalent of a bank." 294 F. 2d at 717. The regulations of the Federal Home Loan Bank Board, governing federal savings and loan associations, describe accounts in such associations as "savings accounts". 12 C.F.R. 541.3, *et seq.* The legislative history of Section 5 of the Home Owners Loan Act of 1933, 48 Stat. 132, as amended, 12 U.S C. 1464, authorizing organization of federal savings and loan associations, also makes it plain that Congress was aware that these associations would compete for private savings funds. H. Rep. No. 55, 73d Cong., 1st Sess. p. 2. See also S. Rep. No. 91, 73d Cong., 1st Sess. p. 2. See, also, the remarks of Representatives Thom and Hancock with regard to insurance of accounts in savings and loan associations (78 Cong. Rec., Part 10, at 11209), and the remarks of Representatives Reilly, *id.* at 11195-96.

[26] The court below emphasized this right of defendant as a characteristic of an "investment" (R. 52). Aside from the fact, as we have shown, that the issue here is not properly characterized as what, in the abstract, constitutes

With regard to the earning of income on the money deposited, while the bank calls such income interest and the federal savings and loan association terms it a dividend, the fact remains that on both types of accounts the deposits earn a modest rate of income which may be a fraction of a percent higher on the savings and loan account. Moreover, in both instances, the benefit monies, or more accurately reserves maintained by the institutions, are readily available for withdrawal; meanwhile, the benefit monies are utilized, upon deposit, by the bank or the savings and loan association in restricted commercial enterprises.[27]

It is true, as the majority below points out, that a depositor in a federal savings and loan association is, in a strict legal sense, an investor who is a shareholder with voting rights rather than a creditor of the association.[28] It is also true that a deposit in an association may earn a fraction of a percent higher

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an "investment", even the court below recognized that this right of deferment on a savings and loan association account was no different from the bank's right of deferment on a savings account (R. 52).

[27] The organization and operation of federal savings and loan associations are, of course, under the strict supervision of the Federal Home Loan Bank Board. See 12 C.F.R. 541.1 *et seq.*

[28] Thus, Section 5 of the Home Owners Loan Act of 1933, 48 Stat. 132, as amended, provides in relevant part as follows:

> **Federal Savings and Loan Associations—Organization Authorized.**
>
> **(a) In order to provide local mutual thrift institutions in which people may invest their funds * * *.**

income than a bank deposit, which is undoubtedly the greatest motivating factor for deposits in such associations. Nor do we dispute that for other questions, not involving the exemption provisions at issue here, these differences may be decisive. Cf. *Wisconsin Bankers Association* v. *Robertson*, 294 F. 2d 714 (C.A. D.C.), certiorari denied, 368 U.S. 938.[29] We emphasize again, however, that the question posed here should not be whether petitioner is an "investor", in some sense of the word, by reason of the deposits in federal savings and loan associations, but rather whether those deposits, identified as to their origin, meet the criteria for the veterans' benefit exemption set forth in the statute and the decisions of this Court.

Upon this issue, the similarities between bank and federal association savings accounts are controlling.

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[29] The question in *Wisconsin Bankers* was whether certain regulations of the Federal Home Loan Bank Board providing for the organization and operation of federal savings and loan associations were invalid in that they permitted these associations to raise capital by means of "deposits", specifically prohibited by Section 5 of the Home Owners Loan Act of 1933. Holding that these deposits or accounts were technically shares in the association and that the depositor was a shareholder rather than a creditor, the Court of Appeals held the regulations valid as not permitting illegal banking. As Judge Burger noted in his concurring opinion, the "legal realities" of the question there were obviously controlled by the technical legal relationship between depositor and association. 294 F. 2d at 717. In this case, however, as the government stated in its brief in opposition to the petition for a writ of certiorari in the *Wisconsin Bankers* case, pp. 8-9, the issue is controlled by the purposes and coverage of the liberal exemption provision established by Congress.

Both savings devices are unquestionably used in the same fashion, generally, for retention of monies to afford the maintenance and support provided by the Veterans Administration benefit payments and protected by Congress in this statute. While the depositor in a federal savings and loan association is technically a shareholder, his deposit, under the criteria advanced in the *Trotter*, *Lawrence*, and *Carrier* cases, is no more a purchase of property than is a deposit in a bank. Both deposits retain, in essence, "the quality of moneys" permitting the veteran a convenient mode of use to meet his needs and obligations. And, finally, while the relationship of depositor to federal savings and loan association is, in the strict legal sense, an investment relationship (cf. the *Wisconsin Bankers* case, *supra*), the investment made by depositing benefit monies in a savings account in an association is, as we have shown, not the "permanent investment" of the trader in securities, land or buildings excluded from immunity by the earlier decisions of this Court.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment below should be reversed.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 604

HARRY CLIFFORD PORTER,

Petitioner,

—v.—

AETNA CASUALTY AND SURETY COMPANY,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF PETITIONER

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Washington, D. C.
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STATEMENTS, RECENT AUTHORITIES CITED AND PHOTOSTATS

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 604

HARRY CLIFFORD PORTER,

Petitioner,

—v.—

AETNA CASUALTY AND SURETY COMPANY,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF PETITIONER

Preliminary Statement

Petitioner, an ex-serviceman, and a patient at Saint Elizabeths Hospital, by his committee and attorney, makes this preliminary statement of the proceedings and what happened up to the time of the filing of an appeal by the respondent, Aetna Casualty and Surety Company in case #16066 of the United States Court of Appeals, District of Columbia Circuit.

The Aetna Casualty and Surety Company on, to wit, the 8th day of February, 1960, secured a judgment against petitioner in the case of *Aetna Casualty and Surety Company* v. *Harry Clifford Porter* in the United States District Court for the District of Columbia, numbered 57-57; this judgment was obtained on a so-called confession obtained

from Porter, who, at the time said confession was obtained, was declared by several psychiatrists, Erwin Tiplin, captain of the United States Army Air Force (M.C.), Dr. Amino Perretti and Dr. Joseph L. Gilbert (now deceased) on the staff of Saint Elizabeths Hospital in 1952, to be of unsound mind, not capable of knowing right from wrong. Immediately after said judgment, petitioner, by his committee and attorney, filed an appeal in said action in the United States Court of Appeals for the District of Columbia Circuit, which judgment after a hearing, was affirmed (this case in Court of Appeals is numbered 15664).

Thereafter the respondent, Aetna Casualty and Surety Company filed an attachment February 24, 1960 and a Motion for Condemnation thereafter on March 17th, 1960 of petitioner's funds deposited in the Columbia Federal Savings and Loan Association and the Prudential Building Association in case #57-57, attaching the disability or pension funds that petitioner's committee received from the Veterans Administration and which said committee had deposited by order of Court from time to time in the Columbia Federal Savings and Loan Association and the Prudential Bldg. Association for the benefit, care, keep and rehabilitation of said petitioner.

Petitioner's committee and attorney thereafter on March 1st, 1960, filed a Motion to quash the attachment and a reply to the Motion for Condemnation in said case; after a hearing in open Court and argument by counsel, the attachment and Motion of Condemnation were denied, and the Motion to quash, filed by petitioner's committee and counsel, was granted by Judge Youngdahl July 14, 1960, from which finding and order of said Court by Judge Youngdahl, the respondent, Aetna Casualty and Surety Company, appealed to the United States Court of Appeals for the District of Columbia Circuit, which appeal, numbered 16066 is before this Court.

After a hearing in this matter, two of the Judges of the Court of Appeals reversed the District Court's findings and order; the third Judge dissenting (R. 47 to 54). Thereafter petitioner, by his committee and attorney, filed a Motion for a rehearing, *en banc,* which was denied.

From the above ruling, petitioner (whose funds are attached), by his committee and attorney filed his petition for Writ of Certiorari September 18, 1961 *in forma pauperis* and which was granted December 11th, 1961, now before this Court.

Opinions Below

The opinion of the Court of Appeals has not been reported, but is contained in the record (R. 47-54).

The opinion of Judge Luther W. Youngdahl in case #57-57, United States District Court for the District of Columbia was written and filed in the matter July 14, 1960, a copy of which is attached hereto and made a part of record, transcript of record, pages 27 to 31 inclusive, as well as the opinion of the Court of Appeals; majority opinion and the dissenting opinion of Judge Prettyman was delivered July 13, 1961 (R. 47 to 54 inclusive).

Jurisdiction

The judgment of the Court of Appeals was entered on July 13, 1961 (R. 55); a timely petition for a rehearing, *en banc,* was presented, which was denied by said Court of Appeals on August 21st, 1961 (R. 65), case #16066, and thereafter a petition *in forma pauperis* for a Writ of Certiorari was filed in this Court September 18th, 1961 and was granted December 11th, 1961.

Question Presented

When a Court appointed committee of an incompetent veteran deposits disability benefits or pension funds by an order of Court in a savings institution upon the agreement between the committee and the institution that no shares of stock were purchased, but that the money, so deposited, could be drawn out the same as a bank account, upon the presentation of the deposit book, can such funds, which have not changed *their identity,* be attached under article 38 of the United States Code, sections 454 and 454A by a judgment creditor?

The following citations cover source of various legislation pertinent to the issue involved.

Act of August 12, 1935;
Act of October 17, 1940;
38 U.S. Code 454;
38 U.S. Code 454A;
Senate report 1092—74th Congress, 1st session;
Senate report 16—74th Congress, 1st session.

Statute Involved

The exemption statute, 38 U.S.C.A., section 3101, page 135 and sections 454 and 454A reads—

Payments of benefits due or to become due under any law administrated by Veterans Administration, shall not be assignable, except to the extent specifically authorized by the law and such payments made to or on account of a beneficiary, shall be exempt from taxation; shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable

process, whatsoever, before or after receipt by the beneficiary (Act of Congress, August 12, 1935).

This law has not been changed or modified.

Statement

This is an attachment by a judgment creditor on the funds under the control of a Court appointed committee that were deposited from time to time by his committee in two Savings Institutions, The Columbia Federal Savings and Loan Association and the Prudential Building Association, where they were deposited by order of Court and after committee had understood that he was not purchasing shares of stock, but depositing in said institutions the same as in a bank and that they paid interest on said deposits and said funds could be withdrawn at any time, the same as a bank account by or upon the presentation of the deposit book, and no notice was necessary (photostat copies of the deposit books are attached hereto and show no purchase of shares of stock was made).

At present, petitioner is not receiving any disability or pension funds, as under a recent order of the Veterans Administration, he, having at the time of the attachment over Fifteen Hundred Dollars in deposits, his pension or disability funds, were cut off completely, and that because of the said attachment filed herein February 24, 1960, he has no funds, whatsoever, even for the necessities of life at said Hospital, where he is confined, and for medical services or other personal necessities.

Petitioner's money or pension funds so received by committee, was placed under rule 23, section A of the United States District Court Rules, which made it mandatory for his committee in the instant case, to withdraw funds from time to time from the checking account and place them in approved institutions which would draw interest and aug-

ment or increase said funds from time to time where such funds would be readily available and could be drawn out on demand for the veteran's needs at any time upon the presenting of the passbook without formal notice; that the passbooks of said institutions or savings accounts show no purchase of shares of stock, as will be shown by the photostat copies of said entries, attached hereto and exhibited and marked Exhibit A1-A2—B1-B2, which clearly show that no shares of stock were purchased.

Petitioner, an indigent ex-serviceman, since his funds (disability or pension funds), have been attached, to wit, February 24, 1960, asks this Honorable Court to determine his constitutional rights under the law, *U.S. Code, Title 38.* The majority opinion of the Court of Appeals in the instant case proceeds upon the flagrant disregard of patient's constitutional rights; the United States Code, The Act of the 74th Congress, 1st session and the ruling held by the following cases:

Waite, D.C., Iowa 1897, 81 F. 359;
Williams v. *U.S. Fidelity and Guaranty Co.,* 71 App. D.C. 9, 107 F. 2d 210 (1939) decided August 7, 1935;
Surplus v. *Remale,* 1949, 87 N.Y.S. 2d 651, 194 Misc. 1036.

A State or the District of Columbia cannot, by legislation or judicial interpretation, alter or change pension legislation.

United States v. *Moyers, et al.,* 15 Fed. Rep. 411;
Walton, et al. v. *Cotton, et al.,* 60 U.S. 355, 15 Law Ed. 653, page 359;
Ballinger v. *U.S. ex rel. Ness,* 33 App. D.C. 308;
United States v. *Moore,* 95 U.S. 760, 763;
United States v. *Day,* 27 App. D.C. 458;
Frizzell v. *United States,* 19 App. D.C. 48.

ARGUMENT

Petitioner Alleges That the Law Is Well Settled That a State Cannot, by Legislation or Judicial Interpretation, Alter or Change Pension Legislation.

It is also clear that although no one has a vested right to a pension, these rights are vested as long as the statute creating the pension remains in force and unchanged, subject to be divested at any time that the legislature may desire. *Rudolph* v. *United States,* 1911, 36 App. D.C. 379.

It is also evident that Congress, if inclined, could enact legislation for the sole purpose of providing its intended beneficiaries with its exclusive use and to prevent others from ever benefiting from these specific funds. In the case of *United States* v. *Moyers, et al.,* 15 Fed. Rep. 411, the Court, at page 417, in discussing the gratuitous nature of the pension, stated:

> "Then it is not a right; it is a bounty; and if the government chooses to say that money shall go absolutely to the pensioner, irrespective of the claims of any creditor or anyone, it has a right to say so, and there is no doubt that such is the policy of the legislation, and that this is the State and Federal Courts, both of which have ruled these points just as I am ruling now".

The Supreme Court of the United States expressed similar sentiment, in the case of *Walton, et al.* v. *Cotton, et al.,* 60 U.S. 355, 15 Law Ed. 653 (p. 359):

> "There can be no doubt that Congress had a right to distribute this bounty at their pleasure, and to declare it should not be liable to the debts of the beneficiaries. But they will be presumed to have acted under the ordinary influences, which lead to an equitable and not

to a capricious result. And where the language used may be so construed as to carry out a benefit policy, within the reasonable intent of Congress, it should be done".

The Act of August 12, 1935, *supra*, was called "An Act to safeguard the estate of veterans derived from payments of pension, compensation, emergency officers' retirement pay and insurance and for other purposes".

Representative John E. Rankin of Mississippi in House Report 16 of the 74th Congress, 1st Session, stated, referring to this Bill, on the floor of the House, in introducing it, said it was:

"Nothing in the world except a measure to throw around the veterans, the safeguards, which I think every American would want thrown around the estate of *insane* veterans" (70 Cong. Rec. 8556 (June 3, 1935)).

Since Section 454A, *supra*, amends Section 454 U.S.C.A., let us determine the object and effect of this amendment. Up to the amendment it appears that the exemption provision applied to all claims except those of the United States.

In the case of *Ballinger* v. *United States, ex rel. Ness*, 33 App. D.C. 308, the Court said:

"In legislation of this kind, requiring the performance of administrative duties by the head of a department to put it in execution, it is usual, as was done in the foregoing statute, to confer the power to make appropriate regulations for carrying the same into effect. Such supplementary regulations have all the force of law, if not in conflict with the law itself, or in plain excess of its requirements."

In *United States* v. *Moore*, 95 U.S. 760, 763, 24 L. Ed. 588, 589, the Court said:

> "The construction of a statute by the department charged with its administration made and uniformly followed for a number of years, is always entitled to the most respectful consideration, and ought not to be overruled."

Following the same reasoning, the Court in *United States* v. *Day*, 27 App. D.C. 458 said:

> "A settled construction by a department of the government of laws of the United States will not be overturned by the Courts unless clearly wrong."

Frizzell v. *United States*, 19 App. D.C. 48;
United States v. *Moyers*, 15 Fed. Reports 411.

The Veterans Administration was especially created for or concerned in the administration of laws relating to the relief and other benefits provided by law for veterans, their dependents and their beneficiaries.

Consequently great weight must be afforded the construction of the statute by the Veterans Administration. The Administrator of Veterans Affairs construed Section 454A, *supra*, T 38, in Section 13, 339, Code of Federal Regulations of the United States of America as follows:

> "Section 13, 339 (a), Section 3, Public No. 262, 74th Congress (38 J.S.X. 454a), applies to payments made to or on account of a beneficiary under the laws relating to veterans and exempts such payments, either before or after receipt by the beneficiary, from the claims of creditors, and provides that same shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatever. The language

of the Section has been construed by the Supreme Court of the United States to the effect that such exemption does not extend to property purchased such as real estate, stocks and bonds, in which the proceeds of such payments are or invested" (*Carrier* v. *Bryant*, 306 U.S. 545).

In *De Ruiz* v. *De Ruiz*, 66 App. D.C. 370, 88 F. 2d 752 (1936) the Court said:

"While it is the duty of the Court in interpreting legislation to ascertain, if possible, the intent of the legislature, we must not overlook the general rule of statutory construction that such intent is to be found in the language employed."

In *United States* v. *Goldenberg*, 168 U.S. 95, 103, 18 S. Ct. 3, 42 L. Ed. 394, the Court said, when the words used are plain, they give meaning to the act, and it is neither the duty nor the privilege of the Courts to enter speculative fields in search of a different meaning.

Petitioner and committee contend that the language of Section 454A, is plain and clear and not subject to speculative interpretation.

Another well established rule of statutory construction is that specific or special legislation, will prevail, when in conflict with general law, *Simon* v. *Simon*, 58 App. D.C. 158, 2d F. 2d 530. A further extension of this general rule was laid down in *Sanford* v. *Sanford*, 52 App. D.C. 315, 236 F. 777 wherein the Court ruled that general and specific provisions in apparent contradiction, whether in the same or different statutes, and without regard to priority of enactment, may subsist together, the specific qualifying and supplying exceptions to the general.

Petitioner holds that legislation, relative to pensions benefits of veterans, 38 U.S.C.A. 454A, is special legislation, affecting a specific class of individuals.

The payment of pensions or disability funds are intended primarily for the maintenance, care, keep and rehabilitation of said pensioner thereafter; they cannot be attached by a judgment creditor.

The question presented by this case is whether the exemption applies to these accounts in the Columbia Federal Savings and Loan Association and/or the Prudential Building Association, where the books show no shares were purchased, whether the account is "*property*" purchased in part or wholly out of such payments, rendering the exemption unavailable. In *Trotter* v. *Tennessee,* 200 U.S. 354 (1933) the Supreme Court *held that lands purchased with veterans' benefits payments,* were subject to taxation, the benefits having lost their exempt status when they were "*converted into land and buildings,*" WHICH COULD BE TRANSFERRED (290 U.S. 356).

In *Lawrence* v. *Shaw,* 300 U.S. 245 (1937), the Court held that the deposit of veterans' benefits in a *bank* did not thereby render the funds *non-exempt,* as well as the following cases:

Ballard Estate (1937), 293 N.Y.S. 31;
Atlantic v. *Stokes* (1939), 165 S.E. 27;
Yoke v. *Yoke* (1936), 183 A. 555, 170 Md. 75;
U.S. Trust Co. of N. York v. *Helvering* (1939), 59 Sec. 602, 307 U.S. 59;
Heoppel v. *Westover* (1948), 79 F. Supp. 794.

These payments are intended primarily for maintenance and support of the veterans. To that end, neither he nor his committee is obliged to keep the monies on his person or under his roof (300 U.S. at 250).

Accordingly, it has been held in this Circuit that a checking account is exempt. *Williams* v. *U.S. Fidelity and Guaranty Co.*, 71 App. D.C. 9, 107 F. 2d 210 (1939) likewise a savings account is exempt. But MR. JUSTICE HOLMES has instructed us:

> "A word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used." *Towne* v. *Eisner*, 245 U.S. 418, 425 (1918).

Is money deposited in a savings account or in a building association, which has not changed its identity, the same as a bank account and which can be drawn out without a notice on demand with passbook, exempt?

In *Carrier* v. *Bryant*, 307 U.S. 545 (1939), the Supreme Court was asked to decide whether negotiable notes and United States bonds purchased with veterans' benefits by a veteran's guardian were exempt from execution on a judgment against the veteran. The Court held the *property* subject to execution, quoting from the *Lawrence* case to the effect that:

> "The provision of the Act of 1935 that the exemption should not apply to *property* purchased out of the moneys received from the government shows the intent to deny exemption to *investments in real estate*, as was ruled in the *Trotter* case" (306 U.S. at 550, quoting from 300 U.S. at 250). (Emphasis supplied.)

The statute there involved was 53 of the Act of August 12, 1935, c. 510, 49 Stat. 607 which was not significantly different from 38 U.S.C.S. 3101.

> "Investment of trust funds, unless otherwise provided in the instrument creating the trust, or except under

> extraordinary conditions set forth fully to the Court, will ordinarily be sanctioned only when made in the obligations meeting the requirements herein set forth."

And see *International Stevedoring Co.* v. *Haverty*, 272 U.S. 50 (1926). Because our local rules speak of a deposit in a savings and loan association or building association as an "investment" *does not necessarily mean it is an "investment"*.

Section 3101 does not speak of *"investment"*. The statute speaks of *any property purchased* in part or wholly out of such payments. When CHIEF JUSTICE HUGHES used the word "investment" in *Lawrence* v. *Shaw*, quoted above, he was referring to the *Trotter* case. The only sentence in *Trotter* case in which the word "investment" appears is the following: *Money invested in real estate is not exempt* (290 U.S. 351).

We see no token of a purpose to extend a like ruling where money is deposited in a bank, a saving association or building association, where it has not lost its identity as in the instant case.

Diligent inquiry has been made with both building associations in which the deposits were made and with other like associations: all conclude and hold that such deposits are money or funds, and not purchase of stock.

Where building and loan associations hold that such deposits are the purchase of "shares", they still hold that such deposits are cash or money and not stock.

The local Inheritance Tax Bureau also holds and treats said deposits, upon the death of a decedent, as cash and/or money, and not stock and treat it as such. So does the Register of Wills Office of the District of Columbia.

Reading the word "investment" in the light of this statement is quite noticeable; an immunity was not to extend to permanent investments. As further clarification, the Court SAID:

> "* * * we think it very clear that there was an end to the exemption when they *lost the quality of moneys* and were *converted into land and building*" (290 U.S. at 356) (emphasis supplied),

something that can be sold or transferred.

Moneys deposited in a saving association or building association by the committee by order of Court of a veteran, *have not "lost the quality of monies"; they have not been "converted" into "property"*, as in this particular case; no stocks or shares were purchased, *but only deposited for holding, as the books will show (copy of entry in books, Exhibits A-1, A-2 and B-1 and B-2 and attached hereto).*

Indeed, in *Lawrence,* bank deposits were held exempt from taxation and after stating that it would be possible "under a special agreement" for deposits to "assume the character of investments," the Court carefully pointed out, *"we do not suggest that a mere allowance of interest upon deposits would be enough to destroy an immunity where it would otherwise attach."* The important factor would appear to be not an overly legalistic conception of the nature of the bank accounts, *but rather the case with which "the proceeds of the collection are subject to withdrawal;* THE SAME AS IN A BANK ACCOUNT.

That a depositor in a savings and loan or building association does not necessarily purchase shares, but is a creditor-depositor of the association, is a matter of form, which, in the opinion of the petitioner should have no bearing on the resolution of the problem here involved—just as the probability *that a deposit in a checking account will not*

receive on demand the specific money deposited, but rather an equal sum of money in like kind, afforded no difficulty to the Court in WILLIAMS, *supra.* And see *Elvert Sales Co.* v. *Granite City Bank,* 192 S.E. 66 (1937).

It simply was a draft upon demand for the veterans' use (300 U.S. at 250).

As a practical matter, a withdrawal from a savings account can be accomplished as quickly as a withdrawal from a checking account—and this is true whether the savings account is in a savings bank, savings and loan, or building association. A checking account is immune; a savings account likewise, should be. Furthermore, the Congressional purpose to immunize veterans' benefits would indicate that a liberal construction should be given the statutory grant of immunity. See *Mixon* v. *Mixon,* 203 N.D. 566, 166 S.E. 516 (1932); *Yake* v. *Yake,* 170 Md. 75, 183 A. 555 (1936); cf. *Hoeppel* v. *Westover,* 79 F. Supp. 794 (D.C. Cal. 1948). The following cases hold that money (Veterans' funds) placed in bank or saving account is exempt.

Williams v. *U.S. Fidelity and Guaranty Co.,* 1939, 107 F. 2d 210, 71 App. D.C.;
Bellair Estate (1937), 293 N.Y.S. 31;
Atlantic v. *Stokes* (1939), 165 S.E. 27;
In Re Guardianship Le Letourmen, exemption good except to real estate and bonds;
Buxtons Estate, 1944, 16 N.W. 2d 399, 246 Wis. 97;
Lawrence v. *Shaw,* hereinbefore used, 300 U.S. 245.

In a recent case of *Arthur* v. *Kercoud, mental health case #35-57 in the United States District Court and decided in December, 1959 by Judge Keech of our Court in which he held that where pension funds were put or deposited in a building and loan association, it did not loose their identity and were exempt and unattachable under*

United States Code 38. And several of our other Courts in this jurisdiction have decided the same.

In *Appancose County* v. *Henke, et al.*, 207 Iowa 835, the Court held that the *co-mingling of pension money and interest thereon, did not loose their identity and did not stop the claim of exemption.*

The purpose of the law and the order of Court is to preserve the assets of the incompetent's estate, and at the same time, to receive some yield, thereby augmenting the assets from time to time, all in the interest of the incompetent so that when he is restored to normalcy mentally and discharged as such, he will have some estate to take care of himself during his rehabilitation in an orderly society and not become a charge upon the community.

This being true, it is inconceivable to believe that a Court would pass and enter such an order, knowing at the time that such an order is an instrumentality of personal benefit to a creditor of the incompetent if such funds on deposit in banking institutions are attachable.

Should a committee fail or refuse to obey the mandate of the Court, he would be subjecting himself in contempt of Court, removal and other possible consequences. If the committee knew that such deposits were attachable and placed the funds in a safety deposit box, he would be rendering a greater service to his ward than by obeying the Court's mandate as such funds would then be unattachable, but by so doing, he would, nevertheless, be subject to contempt and removal, even though under the circumstances, the committee would be rendering a fuller and greater service to his ward than would the Court.

From the above comment and the primary purpose of the law, heretofore cited, your petitioner cannot believe

that the Court would hold that such funds, which have not changed or lost their identity, are attachable.

To hold otherwise, the purpose of the law and order of the Court would be defeated.

The Veterans Administration herein alleges that over one hundred and five thousand incompetent veterans, who are under legal disability are dependent upon these compensation benefits for their livelihood, care, keep, necessities and for rehabilitation purposes, and that of this date said beneficiaries have estates in excess of $750,169,000; nearing all of which were derived from veterans' benefits and deposited in interest bearing accounts in banks and saving institutions; all of which would be subject to creditors, attachments and liens, should this Honorable Court allow the ruling of majority opinion of the United States Appellate Court for the District of Columbia Circuit and numbered 16066, stand.

The Exhibits in this case and asked to be read herewith, are as follows: Exhibits A-1, A-2 and B-1, B-2 attached hereto.

Petitioner says that from the reports of the doctors at Saint Elizabeths Hospital, his mental condition has improved to such an extent that shortly they will request his release and discharge; this cannot be done for at present he has no funds for rehabilitation purposes, but will still be a charge of the United States Government, which claims he owes them for care and treatment over Five Thousand dollars at the present time. Committee received a letter from the U. S. General Accounting Office, attached hereto, marked Exhibit C, and asked to be read herewith. This claim began to run against petitioner before the date of judgment, February 8, 1960 and should have priority.

Conclusion

For the foregoing reasons and the law involved herein it is respectfully submitted that the judgment of the Court of Appeals Circuit of the District of Columbia, and numbered 16066 should be reversed, and the order of Judge Youngdahl of the United States Court for the District of Columbia in case numbered 57-57 should be affirmed.

Respectfully submitted,

ETHELBERT B. FREY
Counsel for Petitioner

Photostats

Appellee's Exhibit A-1 and A-2 is the record of initial deposits in the Columbia Federal Savings and Loan Association.

Exhibit B-1 and B-2 is the record of initial deposits in the Prudential Building Association.

These Exhibits are attached hereto and follow this page.

Also attached hereto are Exhibits marked C-1 and C-2, which are a letter from Winfred Overholser, M.D., Superintendent of Saint Elizabeths Hospital together with bill for care and treatment of Appellee Harry Clifford Porter.

EXHIBIT A-1

SAVINGS ACCOUNT No. 31337

This Certifies that

Ethelbert B. Frey, Committee of the Estate of Harry C. Porter

holds a Savings Account representing share interests in Columbia Federal Savings and Loan Association, subject to its charter and bylaws, the Rules and Regulations for the Federal Savings and Loan System, and to the laws of the United States of America

COLUMBIA FEDERAL SAVINGS AND LOAN ASSOCIATION

INSURED PROTECTION for Your Savings

Safety of your Savings [illegible] Columbia Federal Savings is [illegible] insured up to $10,000 by the FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, Washington, D. C., an instrumentality of the United States Government, created by Act of Congress June 27, 1934.

The individual Savings Account of each member is insured up to $10,000. Joint accounts and [illegible] accounts are similarly protected. A husband and wife can each have an account insured up to $10,000 and a joint account insured up to $10,000, for a total of $30,000 is insured.

SAVE AND BORROW WITH CONFIDENCE IN COLUMBIA FEDERAL SAVINGS

EXHIBIT A-2

SAVINGS ACCOUNT No. 31337

COLUMBIA FEDERAL SAVINGS AND LOAN ASSOCIATION
WASHINGTON 1, D. C.

DATE	PAYMENTS	WITHDRAWALS	BALANCE
MAY 11 55	3,000.00		3,000.00 CF
JAN 4 56	JUN55 7.50		
JAN 4 56	DIV DEC55 45.11		3,052.61 CF
JAN 6 56	1,000.00		4,052.61 *
DEC 6 56	JUN56 70.91		4,123.52 *
DEC 6 56	1,000.00		5,123.52 *
DEC 27 57	DEC56 75.07		5,198.59 CF
DEC 27 57	JUN57 90.97		5,289.56 CF
DEC 27 57	DIV DEC57 92.56		5,382.12 CF
JAN 8 59	JUN58 94.19		5,476.31 *
JAN 8 59	DEC58 95.83		95.83 CF
JAN 8 59	DIV DEC58 95.83		5,572.14 CF
JAN 19 60	DV159 48.76		5,620.90 CF
JAN 19 60	DV259 56.20		5,677.10 CF
JAN 19 60	DV359 56.77		5,733.87 CF
JAN 19 60	DV459 57.33		5,791.20 CF

EXHIBIT B-1

Shares _____ No. 18215

Ethelbert B. Frey
Committee for Harry C. Porter
600 International Building
Address 1319 F Street, Northwest
Washington, D. C.

_____ member of The Prudential Building Association, Washington, D. C., subject to the lawful provisions of its constitution and by-laws.

Date March 3 19 59

ALWAYS BRING THIS BOOK WITH YOU

OR MAIL WITH PAYMENT.

IMPORTANT

This book must accompany all transactions.

Remittances may be made through the mail by check or money order.

All items credited in this book are subject to final collection of check or draft.

Members should notify the Association of any change of address. This will insure the delivery of Association reports and correspondence.

Keep this book smooth and clean. If lost, notify the Association immediately.

Safety of your Account in this Association is fully insured up to $10,000 by the FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, Washington, D. C., an instrumentality of the United States Government.

EXHIBIT B-2

Shares _____ No. 18215

THE PRUDENTIAL BUILDING ASSOCIATION
WASHINGTON 5, D. C.

DATE	PAYMENTS	WITHDRAWALS	BALANCE	Items
MAR 3 59	3,0 0 0.0 0		3,0 0 0.0 0	P-
DV2 59	9.36		3,0 0 9.36	Pa
DV3 59	2 8.2 1		3,0 3 7.5 7	Pa
DV4 59	3 0.3 8		3,0 6 7.9 5	Pa
OCT 21 59		2,0 0 0.0 0 -	1,0 6 7.9 5	Pa
DV1 60	1 0.6 8		1,0 7 8.6 3	Pa
JAN 11 60	2,0 0 0.0 0		3,0 7 8.6 3	Pa
DV2 60	3 0.7 9		3,1 0 9.4 2	Pa
JUN 2 60		6 2 5.3 6 -	2,4 8 4.0 6	Pa
DV3	2 4.8 4		2,5 0 8.9 0	Pa
DV4	2 5.0 9		2,5 3 3.9 9	Pa
NOV 28 60		1 6 2.5 0 -	2,3 7 1.4 9	Pa

Exhibit B-2

1319 F Street, N. W.
Washington, D. C.

payer with his remittance.
SEE INSTRUCTIONS BELOW.

Date	DESCRIPTION	Quantity	Unit Price Cost	Unit Price Per	Amount	
	For cost of care and treatment furnished Harry C. Porter, #78,826, under the provisions of Public Law 313, 84th Congress, for the period October 1, 1960 thru December 31, 1960.	92	8.16	day	750	72
	Previously billed and unpaid				2,194	18
	MAKE CHECKS PAYABLE TO: SAINT ELIZABETHS HOSPITAL					
	753099		*AMOUNT DUE THIS BILL,*		$ 2,944	90

Exhibit C-2

This is not a receipt

INSTRUCTIONS

Tender of payment of the above bill may be made in cash, United States postal money order, express money order, bank draft, or check, to the office indicated. Such tender, when in any other form than cash, should be drawn to the order of the Department or Establishment and Bureau or Office indicated above.

Receipts will be issued in all cases where "cash" is received, and only upon request when remittance is in any other form. If tender of payment of this bill is other than cash or United States postal money order, the receipt shall not become an acquittance until such tender has been cleared and the amount received by the Department or Establishment and Bureau or Office indicated above.

Failure to receive a receipt for a cash payment should be promptly reported by the payer to the chief administrative officer of the bureau or agency mentioned above.

U S GOVERNMENT PRINTING OFFICE 1958 —O-486459

EXHIBIT C-1

DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
SAINT ELIZABETHS HOSPITAL
WASHINGTON 20, D. C.

78,826

In reply refer to: FIN/JWH

ADDRESS ONLY
THE SUPERINTENDENT
SAINT ELIZABETHS HOSPITAL

Re: Harry C. Porter
January 12, 1961

Mr. Ethelbert B. Frey, Esq.
Attorney and Counsellor at Law
600 International Building
1319 F Street, N. W.
Washington, D. C.

Dear Mr. Frey:

Enclosed is Bill for Collection, in the amount of $750.72, covering the cost of care and treatment for your ward, Harry C. Porter, for the period October 1, 1960 through December 31, 1960. The total amount now due and unpaid is $2,944.90.

Sincerely yours,

Winfred Overholser

Winfred Overholser, M. D.
Superintendent

Enclosure - 1

Part of this was [illegible] before Feb 8. 1961
is the [illegible] from Dec. 14. 1957

Exhibit C-1

EXHIBIT C-2

Standard Form No. 1114
9 GAO 1030
1114-103

BILL FOR COLLECTION

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SAINT ELIZABETHS HOSPITAL
(Department or Establishment and Bureau or Office)

Washington, D. C.
(Address)

Bill No. 288

Date 12-31-60

PAYER:

Ethelbert B. Frey, Comm.
600 International Building
1319 F Street, N. W.
Washington, D. C.

This bill should be returned by the payer with his remittance.

SEE INSTRUCTIONS BELOW.

Date	DESCRIPTION	Quantity	Unit Price Cost	Unit Price Per	Amount	
	For cost of care and treatment furnished Harry C. Porter, #78,826, under the provisions of Public Law 313, 84th Congress, for the period October 1, 1960 thru December 31, 1960.	92	8.16	day	750	72
	Previously billed and unpaid				2,194	18
	MAKE CHECKS PAYABLE TO: SAINT ELIZABETHS HOSPITAL					
	753099			*AMOUNT DUE THIS BILL,*	$ 2,944	90

Exhibit C-2

This is not a receipt

No. 604

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

HARRY CLIFFORD PORTER, *Petitioner*

v.

AETNA CASUALTY & SURETY COMPANY, *Respondent*

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

BRIEF FOR THE RESPONDENT

JOHN L. LASKEY
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509 Albee Building
Washington 5, D. C.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX

CITATIONS

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---

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the District Court, Youngdahl, J. (R. 27-31), is reported at 185 F. Supp. 302. The opinions of the Court of Appeals, Miller, C. J., Burger, J., and Prettyman, J. (R. 47-54), are not yet reported.

JURISDICTION

Judgment of the Court of Appeals was entered on July 13, 1961 (R. 55). Petition for rehearing *en banc* was denied on August 21, 1961 (R. 65). Petition for

certiorari was filed on September 18, 1961, and granted on December 11, 1961 (R. 66). Jurisdiction of this Court is predicated upon 28 U.S.C. 1254(1).

THE QUESTION PRESENTED

When the Committee of an incompetent veteran uses disability benefits payable to the veteran for the purchase of shares in savings institutions specifically approved by the Court for the "investment" of trust funds, are the resulting share interests "investments," in the legal sense, and, thus, *not* exempt from attachment by a judgment creditor of the incompetent?

THE STATUTE INVOLVED

> "Payments of benefits due or to become due under any law administered by the Veterans' Administration shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to claims of the United States arising under such laws nor shall the exemption therein contained as to taxation extend to any property purchased in part or wholly out of such payments. * * *"[1]

---

[1] 38 U.S.C. Section 3101(a). This is, essentially, the form in which the statute has been since its original enactment. (Act of March 3, 1873, Rev. Stat. Section 4747 (1878); World War Veterans' Act of 1924, Chapter 320, Section 22, 43 Stat. 607, 613; Act of August 12, 1935, Chapter 510, Section 3, 49 Stat. 607, 609; Act of September 7, 1958, 72 Stat. 1229.) The phrase "either before or after receipt by the beneficiary" was added by the amendment of 1935.

FACTUAL STATEMENT

Some years ago, Gore Properties, Inc., a corporation engaged in the real estate business in the District of Columbia, employed one William F. Hickey as resident manager of the Ritz Apartments, one of its projects. In the summer of 1952, Hickey hired a certain Harry Clifford Porter, a non-commissioned officer in the United States Air Force, to paint the interiors of several apartment units in the development. Hickey knew nothing about the serviceman, other than having seen him in the vicinity in military uniform, and made no investigation whatsoever into his background or character. He put Porter to work painting the apartment of one of the tenants, a young lady who lived alone. Porter murdered the young lady. He was subsequently indicted, but was adjudicated insane and committed to Saint Elizabeth's Hospital; his later trial resulted in a verdict of not guilty by reason of insanity.

After the murder, the victim's Administratrix brought a wrongful death action against Gore, its manager, Hickey, and the American Security and Trust Company, Gore's collection agent, alleging that the Defendants were negligent in hiring Porter without any investigation into his background or character, and in failing to properly supervise and control him. At the conclusion of the Plaintiff's case, the District Court directed verdicts in favor of all Defendants, and the Plaintiff appealed. The Court of Appeals reversed and remanded, as to the Defendants Gore and Hickey. This is reported as *Kendall, Administratrix,* v. *Gore Properties, Inc., et al.,* 98 U.S. App. D.C. 378, 236 F. 2d 673.

The defense of the wrongful death action had been undertaken by Aetna Casualty & Surety Company, under the provisions of a policy of liability insurance which had been issued by it to Gore. Upon remand, Counsel for Aetna effected a settlement of the suit, and the Company paid the settlement amount.

In due course, Aetna, pursuant to the subrogation provisions of the policy which it had issued to Gore, brought an indemnity action against Porter to recover the moneys paid out under the policy in behalf of Gore. This resulted in a judgment in favor of Aetna against Porter, and is reported as *Aetna Casualty & Surety Company* v. *Porter*, 181 F. Supp. 81.[2]

Porter was represented throughout all of the proceedings referred to by Ethelbert B. Frey, Esq., of the District of Columbia Bar, who was appointed Committee for Porter. In this capacity, Mr. Frey received from the Veterans Administration, from time to time, various sums of money representing disability benefits payable to Porter by virtue of his military status.

Some of these moneys were deposited by the Committee in an ordinary checking account (*i.e.*, an account which earned no interest and which was subject to withdrawal on demand) in the First National Bank of Washington. This checking account was used by the Committee to pay the ordinary and usual expenses incident to Porter's maintenance and upkeep. Other sums, however, were invested by the Committee in the Columbia Federal Savings and Loan Association and the Prudential Building Association, both also of the District of Columbia, pursuant to Rule 23

---

[2] An appeal by Porter from this judgment was dismissed by the Court of Appeals, *per curiam*, on October 11, 1960, as "frivolous."

of the Rules of the United States District Court for the District of Columbia, which specifically authorizes the investment of trust funds in institutions of this character.[3]

The moneys so invested in these institutions were converted into share interests, which earned dividends, carried voting and other rights, were evidenced by share account books which contained the rules and regulations of the investment associations, and were not subject to withdrawal on demand except at the pleasure of the institutions.

After obtaining its indemnity judgment against Porter, Aetna issued attachments, and motions for judgments of condemnation, against the moneys deposited in the checking account in the First National Bank and the investment interests in Columbia Federal and The Prudential. The Committee responded with motions to quash which, after hearing, were granted by the District Court, Youngdahl, J., except as to the interest increments attached to the share accounts in Columbia Federal and The Prudential. This is reported as *Aetna Casualty & Surety Company* v. *Porter*, 185 F. Supp. 302. From this judgment Aetna appealed, as to the action of the District Court in quashing the attachments laid against the corpus of

---

[3] The Committee apparently contends (Petitioner's Brief, pp. 4, 5) that the investments in the two savings and loan institutions were made pursuant to an "agreement" between the institutions and the Committee to the effect that no "shares of stock" were purchased, and that the transaction was "the same as in a bank". No such agreement was offered or proved at the trial. Respondent submits that the legal relationship between the Committee and the institutions must be determined by the charters, by-laws, and rules and regulations of the two investment institutions.

the investment accounts in the two savings institutions.[4]

On July 13, 1961, the Court of Appeals, speaking through Chief Judge Miller, with Burger, J., concurring, and Prettyman, J., dissenting, reversed the judgment of the District Court and remanded the case with directions to deny the motions to quash and to grant Aetna's motions for judgments of condemnation against the investment accounts (R. 47-54).

Subsequently, Porter filed a Motion for Rehearing En Banc, which was in due course denied, and thereafter petitioned this Court for *certiorari.*

SUMMARY OF ARGUMENT

In providing for the payment of disability benefits to qualified veterans, Congress did not provide that such benefits should be wholly exempt from the claims of creditors. The judicial history of the exemption statute in this Court has made it abundantly clear that the exemption is only partial, and that, particularly, it is not designed to extend to investments purchased with the benefits by or on behalf of the veteran.

Thus, this Court has previously ruled that the exemption does not extend to land purchased with the benefits (*McIntosh* v. *Aubrey,* 185 U.S. 122, 46 L. Ed. 834, 22 S. Ct. 561, and *Trotter* v. *Tennessee,* 290 U.S. 354, 78 L. Ed. 358, 54 S. Ct. 138), nor to negotiable notes and United States bonds so purchased (*Carrier* v. *Bryant,* 306 U.S. 545, 83 L. Ed. 976, 59 S. Ct. 707).

---

[4] Aetna conceded that the District Court was correct in quashing the attachments laid against the checking account in the First National Bank.

With regard to cash in bank, this Court has held that cash on deposit in an ordinary checking account subject to withdrawal on demand is exempt, although the Court was careful to point out that cash on deposit could, under certain circumstances, "assume the character of investments" (*Lawrence* v. *Shaw*, 300 U.S. 245, 81 L. Ed. 623, 57 S. Ct. 443, 108 A.L.R. 1102).

Thus, it has been quite uniformly held that while cash on deposit in an ordinary checking account is exempt (*Williams* v. *United States Fidelity & Guaranty Company*, 71 App. D.C. 9, 107 F. 2d 210; *cf. District of Columbia* v. *Reilly*, 102 U.S. App. D.C. 9, 249, F. 2d 524; *Surplus* v. *Remele*, 87 N.Y.S. 2d 651, 194 Misc. 1936; *Elbert Sales Company* v. *Granite City Bank*, 192 S.E. 66, 55 Ga. App. 835; *Speer* v. *Pierce*, 77 S.W. 2d 77, 18 Tenn. App. 351), ownership shares in savings institutions purchased with the benefits are investments, and, hence, not exempt from execution. (*In re Bowen*, 49 N.E. 2d 753, 141 Ohio St. 602 (tort judgment); *Hale* v. *Gravellese*, 166 N.E. 2d 557, Supreme Judicial Court of Massachusetts, 1960).

Moreover, the legislative history of the savings and loan institutions has made it equally clear that Congress did not intend the savings and loan institutions to be counterparts of, or substitutes for, banks, but rather, that the Congressional intent was to establish investment institutions in order to promote the common thrift. This is apparent from the literal language of the statute under which these institutions exist, the Home Owners Loan Act of 1933, as amended, 48 Stat. 132, 12 U.S.C. Sec. 1464, and the pertinent regulations, 12 C.F.R. Sec. 541.3, *et seq.* Thus, it has necessarily followed that an owner of a share interest in a savings and loan institution is not to be legally analogized with

a depositor in a bank, *viz.*, he is not a mere creditor, but an investor, whose share-ownership embraces certain distinct indicia which do not attach to the ordinary depositor-bank relationship. The result is that a purchased interest in such a savings and loan institution is legally characterized as an "investment," and, accordingly, under the clear import of the previous rulings of this Court, it is not exempt from attachment under 38 U.S.C. Sec. 3101(a).

ARGUMENT

I. The Exemption Contained in 38 U.S.C. Sec. 3101(a) Is Partial, Not Absolute, and, Under the Prior Decisions of This Court, the Exemption Does Not Extend to Investments Purchased By or On Behalf of the Veteran.

The exemption statute has been before this Court on a number of previous occasions and, it is respectfully submitted, the construction placed upon it has been clear and consistent.

In *Trotter* v. *Tennessee*, 290 U.S. 354, 78 L. Ed. 358, 54 S. Ct. 138, this Court held that land purchased with the benefits was not exempt from taxation. In making it clear that the exemption was not designed to extend to investments, among which it included bonds and shares of stock, the Court, speaking through Mr. Justice Cardozo, said that:

> "We see no token of a purpose to extend * * * immunity to permanent investments or the fruits of business enterprise."

Next came the decision in *Lawrence* v. *Shaw*, 300 U.S. 245, 81 L. Ed. 623, 57 S. Ct. 443, 108 A.L.R. 1102. There, it appeared that the veteran's guardian had merely deposited the periodic government checks or warrants in an ordinary checking account, which drew

no interest and was subject to withdrawal on demand. It was stipulated that the funds in bank were "uninvested balances" of the government payments. In holding that funds so employed were immune, the Court, speaking through Mr. Chief Justice Hughes, said that:

> "The provision of the Act of 1935 that the exemption should not apply to property purchased out of the moneys received from the Government shows the intent to deny exemption to investments, as was ruled in the Trotter case. It is of course true that deposits in bank may be made under a special agreement by which the deposits assume the character of investments and would lose immunity accordingly. No such agreement is shown here. Nor are the bank balances shown to be the proceeds of investments. They are stipulated to be 'uninvested balances' of the government payments. Some reference was made at the bar to the possible effect of an allowance of interest upon bank deposits. It does not appear that there was such an allowance in this instance, and we do not suggest that a mere allowance of interest upon deposits would be enough to destroy an immunity where it would otherwise attach. We hold that the immunity from taxation does attach to bank credits of the veteran or his guardian which do not represent or flow from his investments, but result from the deposit of the warrants or checks received from the Government when such deposits are made in the ordinary manner so that the proceeds of the collection are subject to draft upon demand for the veteran's use. In order to carry out the intent of the statute, the avails of the government warrants or checks must be deemed exempt until they are expended or invested."

The most recent pronouncement of this Court is *Carrier* v. *Bryant*, 306 U.S. 545, 83 L. Ed. 976, 59 S. Ct. 707 (1939). There, the Supreme Court of North Carolina had ruled that negotiable notes and United States bonds which had been purchased with the benefits were not exempt from attachment by a judgment creditor of the incompetent. This Court, relying squarely upon its previous adjudications (*viz.*, *Trotter* and *Lawrence*, *supra*), unanimously affirmed, and, speaking through Mr. Justice McReynolds, said that:

> "The conclusion below is supported by McCurry v. Peek (1936) 54 Ga. App. 341, 187 S.E. 854, the only other opinion squarely upon the point here involved which has been called to our attention.
>
> "The language of section three [now section 3101(a)] although not entirely felicitous, conflicts with the petitioners' insistence.
>
> "The first sentence grants exemption from taxation, claims of creditors, attachment, levy or seizure under any legal process whatever. The things exempted are 'payments of benefits' due or to become due either before or after receipt by the beneficiary.
>
> "Investments purchased with money received in settlement of benefits are not such payments due or to become due. Accordingly, giving the words employed their ordinary meaning, the notes and bonds in question are not exempted by the first sentence in section three. It left them, like other property, subject to taxation, claims of creditors, and legal process.
>
> "The second sentence in the section clearly recognizes the distinction between benefit payments and property purchased with money therefrom. It declares the exemption provisions in

the first sentence shall not attach to claims of the United States; also that exemption from taxation shall not extend to property purchased out of benefit payments. Nothing is said concerning claims of creditors. Nevertheless, petitioners seem to maintain, immunity from these must be inferred. But a mere declaration that investments always subject to taxation shall not enjoy exemption therefrom affords no basis for holding them free from claims of creditors. Although the first sentence extended no immunity to investments, apparently out of abundant caution, the second declared them subject to taxation.

"We find nothing in the history or supposed purpose of the enactment adequate to support a construction not in accord with the ordinary import of the words employed."

The State tribunals have been fully consistent in applying the rule as announced by this Court. An excellent recent example is *In re Bowen*, 141 Ohio St. 602, 49 N.E. 2d 753 (1943). There, a creditor sought to enforce a judgment (based on a tort) against the incompetent's guardian. The Supreme Court of Ohio, affirming a judgment of the Court of Appeals holding that although funds on deposit in an ordinary checking account were exempt, real estate and a savings account were investments and subject to seizure, said that:

"From these decisions [*Trotter, Lawrence*, and *Carrier*] of the highest federal court interpreting federal law, it is clear that in the case at bar the checking account in the bank is exempt from the payment of [the judgment creditor's] claim, but that the real estate is not. The inquiry remains as to whether the savings account at interest should be classed as an investment amenable to the demand of the judgment creditor.

"An 'investment' as that word is commonly used and understood is the placing of capital or laying out of money in a way intended to secure income or profit from its employment [citing cases]. And under Section 10506-41, General Code, the deposit of funds by a fiduciary in a savings account in a national bank located in the State of Ohio or a state bank located in and organized under the laws of the State of Ohio is classed as an investment.

"It is therefore our conclusion that both the real estate and the savings account of the ward are subject to the satisfaction of [the judgment creditor's] judgment, and that the judgment of the Court of Appeals should stand affirmed."

It is pertinent to note that the share interests purchased in the two savings institutions by the Committee at bar are specifically authorized by the provisions of District Court Rule 23, and by it classified as "investments." That Rule, which is entitled "Investment of Trust Funds," provides that:

"Investment of trust funds, unless otherwise provided in the instrument creating the trust, or except under extraordinary conditions set forth fully to the Court, will ordinarily be sanctioned *only* when made in the obligations meeting the following requirements:

"Section II-a. *Federal Savings and Loan Associations, Building and Loan Associations and Savings and Loan Associations.* Investment shares, certificates and deposit accounts in said institutions not exceeding $10,000.00 in one institution, provided such institution is located and doing business in the District of Columbia and its accounts are insured by the Federal Savings and Loan Insurance Corporation under the provisions of

Subchapter IV, Title 12 of the United States Code."

The most recent decision in point is an interesting proceeding emanating from the Supreme Judicial Court of Massachusetts. This is *Hale* v. *Gravellese,* which first came before the Massachusetts Court in 1959, and is reported at 162 N.E. 2d 817. It took the form of a petition by an attorney, addressed to the appropriate Probate Court, for a determination of the amount of compensation due the petitioner for services rendered to an incompetent. The guardian resisted the petition, and was joined in this opposition by the Administrator of Veterans' Affairs of the United States Veterans' Administration. The lower Court awarded the petitioner certain fees and expenses, and the guardian and the Administrator appealed. The Supreme Judicial Court affirmed the award (adjusting the amount), and then turned to the matter of payment. The Court said:

> "But in this case the appellants contend that under 38 U.S.C. (1952) Sec. 454a (now Sec. 3101), the funds of the ward held by the guardian are exempt 'from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary.'
>
> "Before ordering payment from the estate, it must first be determined whether the funds therein are exempt. It is generally held that the exempt status of pensions after receipt by a beneficiary or his guardian is lost where the proceeds are invested in another form. *Carrier* v. *Bryant,* 306 U.S. 545, 59 S. Ct. 707, 83 L. ed. 976; *McCurry* v. *Peek,* 54 Ga. App. 341, 187 S.E. 854; *In re Bowen,* 141 Ohio St. 602, 49 N.E. 2d 753; *In re Guardianship of Letourneau,* 238 Wis. 473, 300 N.W. 248.

"In order to obtain the requisite facts bearing on the claimed exemption and that the appropriate decree may be entered we retain the case and direct the judge to report the facts as to the present nature and form of the corpus of the guardianship estate, taking further evidence if necessary."

These directions were followed by the lower Court, and in 1960 the case came back before the Supreme Judicial Court, and will be found at 166 N.E. 2d 557 (decided April 28, 1960). The appellate Court said that:

"This case was previously before us. * * * We retained it * * * to obtain from the trial judge findings as to the nature and form of the corpus of the estate held by the guardian in order to determine what part, if any, of the estate is exempt from the claim of the petitioner under 38 U.S.C. (1952), Sec. 454a (now 38 U.S.C.A. Sec. 3101). * * *

"The judge of the Probate Court now reports that it has been the custom of the present and prior guardians to cash the checks received from the Veterans' Administration for a veteran's disability pension, and, after paying outstanding bills of the ward, to deposit the balance of cash in the East Boston Savings Bank in the name of the guardian. From time to time the guardian would withdraw substantial sums from this account and invest the amounts withdrawn in United States Series E savings bonds. On January 13, 1959, when the case was heard in the Probate Court the estate of the ward consisted of such savings bonds totalling $13,500 and a deposit in the savings bank of $6,405.02. * * *

"In view of these findings we are of the opinion that neither the savings bonds nor the savings ac-

> count is exempt from being applied by the guardian in satisfaction of the petitioner's claim. The exemption of a veteran's disability pension does not extend to property in which the pension payments are invested after receipt. *Carrier* v. *Bryant,* 306 U.S. 545, 55 S. Ct. 707, 83 L. ed. 976."

It should be noted that in a decision handed down on the same date as the case at bar, the Court of Appeals for the District of Columbia had occasion to refer to its ruling in this case. That decision is *Wisconsin Bankers Association, et al.,* v. *Robertson, et al., etc.,* No. 16,212 (July 13, 1961) (discussed more fully *infra*). There the Court, speaking through Chief Judge Miller, and referring to this case, said:

> "We recently held that a 'share' in a federal savings and loan association is an investment, and is not equivalent to the deposit of money in a bank."

The remarks of Judge Burger, concurring in *Wisconsin Bankers,* are illuminating. He said that:

> "The superficial similarities of the [federal savings and loan] associations to banks is admittedly very great. But we are concerned not with appearances but with legal realities; it is here that the differences are marked as Judge Miller has pointed out. The capital of a federal savings association is raised by payments on share interests. Calling them 'payments' on 'savings accounts' does not alter their legal status. That the payment may be regarded by the customer as a 'deposit' or even called at times a deposit by the association does not make it a legal counterpart of a deposit in a bank. The 'depositor' in a federal association is not a creditor as is the depositor in a bank. *Anderson Nat. Bank* v. *Luckett,* 321 U.S. 233, 241-2 (1944). He is an investor, as the

> very language of Section 5(b) of the Home Owners Loan Act describes the relationship. The owner of a 'savings account' in the association is entitled to vote, in much the same way as a stockholder in a corporation, to elect the management. The Act under which they exist recites the congressional purpose which emphasizes the 'investment' character of these shares and distinguishes them from the creditor debtor relationship between a bank account depositor and a bank."

Petitioner continues to insist that the funds in question did not "change their identity." The vice inherent in this contention, of course, is that it completely ignores the dispositive finding of the Court of Appeals, *viz.*, that the funds, when changed from the form of cash in bank to investment shares in saving institutions, in legal effect changed their identity, and, hence, lost the benefit of the exemption.

The dissent of Judge Prettyman in the instant case does not, in effect, differ with the majority of the Court of Appeals in their interpretation of the statute. The dissenting Judge would, rather, resolve the problem by a factual inquiry, through testimony by the Committee, as to how much of the assets on hand are actually needed for the upkeep of the veteran. Such amounts Judge Prettyman would characterize as "current deposits," *viz.*, immune from seizure, while the residue would be denominated "investments" and available to a judgment creditor. With utmost respect to Judge Prettyman, there would seem to be a fundamental difficulty inherent in this approach, it being apparent that there is no statutory authorization for such a procedure. The subject of veterans' benefits is entirely one of legislative creation, and Respondent respectfully submits that any implementa-

tion or amplification of the Congressional mandate must be achieved by the legislature itself, or, at the very least, through its delegate, the Administrator of Veterans Affairs, acting under proper authorization.

It is instructive to note that there is, in actuality, no conflict whatsoever among the Courts which have considered the problem now before this Court. The question will nearly always arise on the state-court level, since the estates of incompetent veterans are customarily handled in the appropriate state guardianship or probate Courts. Respondent submits that the state Courts, following the dictates of this Court in its controlling decisions, have uniformly attained the result reached by the majority of the Court of Appeals at bar.

II. Under the Statute and Regulations Governing the Creation and Operation of the Two Savings Institutions Here Concerned, a Shareholder Is Clearly an Investor, Not a Depositor-Creditor. His Interest Being An Investment, It Is Not, Accordingly, Within the Exemption of 38 U.S.C. Sec. 3101(a).

The Home Owners Loan Act of 1933, 48 Stat. 132, as amended, 12 U.S.C. 1464, and the Regulations of the Federal Home Loan Bank Board, 12 C.F.R. 541.3, *et seq.*, are conclusive on the question as to the nature of the shareholders' interest in an investment association which is subject to the provisions of the statute and supporting Regulations.

Section 5 of the Act provides, in pertinent part, that:

> Federal Savings and Loan Associations—
> Organization Authorized.
>
> (a) In order to provide local mutual thrift institutions in which people may *invest* their funds * * *.

Capital; deposits; certificates of indebtedness

(b) Such associations shall raise their capital only in the form of payments on such *shares* as are authorized in their charter, which shares may be retired as therein provided. *No deposits shall be accepted* and no certificates of indebtedness shall be issued except for such borrowed money as may be authorized by regulations of the Board. (Emphasis supplied)

The pertinent provisions of the Home Loan Bank Board's Regulations provide that:

12 C.F.R. 541.3—Capital. The term "capital" means the aggregate of the payments on savings accounts in a Federal association, plus earnings credited thereto, less lawful deductions therefrom.

12 C.F.R. 541.4—Savings Account. The term "savings account" means the monetary interest of the holder thereof in the *capital* of a Federal association and consists of the withdrawal value of such interest.

12 C.F.R. 541.5—Short-term savings account. The term "short-term savings account" means a savings account in a Federal association which is to be withdrawn in less than twenty-four months from the date on which such account is opened * * *.

12 C.F.R. 543.3—Having been given permission to organize a Federal association, the undersigned hereby subscribe for the amount of capital indicated below, and contract to pay into a savings account, upon the issuance of a charter, the amount of cash stated opposite their respective names below. We agree to cooperate in the development of such an association for the promotion of *local savings* and home-financing.

12 C.F.R. 544.1(a), par. 6—Withdrawals. The association shall have the right to pay the with-

drawal value of its savings accounts at any time upon application therefor and to pay the holders thereof the withdrawal value thereof. Upon receipt of a written request from any holder of a savings account of the association for the withdrawal from such account of all or any part of the withdrawal value thereof, the association shall within 30 days pay the amount requested; Provided, That if the association is unable to pay all withdrawals requested at the end of 30 days from the date of such requests, it shall then pay all withdrawals requested in accordance with such methods and procedures as to amounts and allotments of funds for such purposes as shall be provided in regulations made by the Federal Home Loan Bank Board in effect at the date of the request for withdrawal. *Holders of savings accounts for which application for withdrawal has been made shall remain holders of savings accounts until paid and shall not become creditors.* (Emphasis supplied).

12 C.F.R. 545.1—Savings accounts.— The *capital* of a federal association may be raised through payments on its savings accounts * * *.

12 C.F.R. 545.2—Evidence of ownership.—(a) Signature card. In connection with the issuance of a savings account a Federal association shall obtain a card containing the signature of the owner of such account * * * (b) Account books and certificates. A Federal association that has Charter N shall issue to each holder of its savings account *an account book, or a separate certificate, evidencing the ownership of the account and the interest of the holder thereof in the capital of such Federal association;* * *. (Emphasis supplied)

The statute and the Board's Regulations were recently construed by the District Court and the Court of Appeals for this Circuit. This is, of course, *Wisconsin Bankers Association, et al.*, v. *Robertson, et al.*,

etc., 190 F. Supp. 90, *affirmed*, — F. 2d —, July 13, 1961, *certiorari denied*, 368 U.S. 938, 7 L. Ed. 2d 338, December 11, 1961.

It is respectfully submitted that the *Wisconsin Bankers* decision bears a vital relationship to the case at bar, and merits detailed analysis.

The case took the form of an assault on the Federal Home Loan Bank Board by a Wisconsin banking association, several Wisconsin state-chartered banks, and a Wisconsin national bank, the plaintiffs contending that the Board's Regulations of 1949 were illegal and invalid in that they permitted federal savings and loan associations to accept "deposits" on "savings accounts," in violation of the Congressional dictate that "deposits" could not be accepted by such associations, who must raise their capital in the form of payments on their authorized "shares."

Specifically, the plaintiffs contended that although Section 5 of the Home Owners Loan Act of 1933, as amended, *supra*, provided that the associations should raise their capital "*only* in the form of payments on such *shares* as are authorized in their charter(s)," and that "No deposits shall be accepted," the Regulations, in providing that the capital of an association "may be raised through payments on its *savings accounts*" (12 C.F.R. 545.1), in defining capital as "the aggregate of the payments on savings accounts" (12 C.F.R. 541.3), and, finally, in defining "savings account" as the "monetary interest of the holder thereof in the capital of a Federal association" (12 C.F.R. 541.4), in effect unlawfully permitted the associations to raise capital by payments on "savings accounts" rather than on "shares," thus permitting

the associations to go into "the banking business" in competition with the plaintiffs.

The District Court, in a well-reasoned opinion by Judge Tamm, upheld the validity of the 1949 Regulations, and rejected the plaintiffs' contentions (190 F. Supp. 90.) On appeal, a unanimous Court (*per* Miller, C. J., and Bazelon and Burger, JJ.) affirmed. The Court said that:

> "The appellants principally rely for support of their theory of illegality upon the 1949 regulation which defines 'capital' as 'the aggregate of the payments on savings accounts in a Federal association, plus earnings credited thereto, less lawful deductions therefrom.' Whether this regulation is in accord with Section 5(b) of the Act depends upon the meaning of the term 'savings account.' If it means an account similar to a savings account in a bank with respect to which the bank is debtor to the depositor the regulation is repugnant to Section 5(b), for two reasons: (a) payments on such savings accounts cannot be payments on 'shares' of capital, as contemplated by the statute, and (b) it violates the provision that 'No deposits shall be accepted. . . .' On the other hand, if the term 'savings accounts' was used to mean 'shares' of an association's capital, the regulation is in accord with Section 5(b).
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> "The section of the 1949 regulations which defines capital in terms of payments on savings accounts is immediately followed by a section which defines the term 'savings account' as 'the monetary interest of the holder thereof in the capital of a Federal association and consists of the withdrawal value of such interest.' It seems quite clear, therefore, that the words 'savings accounts' in the regulation defining 'capital' have the same meaning as the word 'shares' in the statutory provision governing the raising of capital."

Thus, the Court of Appeals in *Wisconsin Bankers* squarely ruled that an account in a federal savings and loan association is a share interest in the association's capital, and not the same as a deposit in bank, and, in effect, that such a share interest is an investment made by the purchaser, and not a mere debt owing to him. This, of course, accords perfectly with the result reached by the majority of the Court on the same day in the case at bar.

The position which the Solicitor General took in *Wisconsin Bankers* should not be ignored. From its Brief in that case (No. 502, October Term, 1961, pp. 7, 8) it is apparent that the Government conceded that:

> "From these regulatory provisions it is clear that, whatever their similarities in name and practical operation, the savings accounts authorized by the regulations are not the legal counterpart of a deposit in a bank, and the relationship of holders of savings accounts to the associations is significantly different from the debtor-creditor relationship that exists between a depositor and a bank. * * *
>
> "Unlike petitioners' depositors, however, members of an association holding savings accounts pay for a share of capital, as Section 5(b) requires; and though they may withdraw their interests, they are subject to a waiting period, as well as a proration of funds in the event of an emergency. They are share-owners, not depositors. * * *
>
> "Our position is that the challenged regulations create procedures and legal interests significantly different, in legal contemplation, from the type of deposits proscribed by Section 5 of the Home Owners Loan Act."

The Solicitor General, thoughtfully, added that:

> "The government's positions in [Porter v. Aetna] and this case are fully consistent."

Whether or not the Government's positions in these two cases are in fact reconcilable is a matter of interpretation, and dispute.

In its analysis of this Court's previous decisions, the Government discerns certain criteria which, it contends, are determinative of the question as to the extent of the exemption. Essentially, it points to the language of Mr. Justice Cardozo in *Trotter* v. *Tennessee*, *supra*, to the effect that "there was an end to the exemption when they [the benefits] lost the quality of moneys," together with the Court's use of the expression "permanent" investments. Then follows the argument that the moneys used to purchase the investment shares in the two savings institutions at bar did not lose their "quality" as moneys, and that the investment shares so purchased are not "permanent" investments within the purview of this Court's decisions.

The Respondent respectfully submits that when funds are used for the purchase of investment interests in savings and loan associations, to which interests are attached distinct legal rights and obligations which are not indigenous to the funds themselves, and which interests are evidenced by written instruments of ownership, the funds have, in a very practical (as well as legal) sense lost the "quality" of moneys. It is helpful to bear in mind that this Court has already made it clear that funds used for the purchase of "bonds" and "shares of stock" (*Trotter* v. *Tennessee*), and "negotiable notes" and "United States bonds" (*Carrier* v.

Bryant) have, under the exemption statute, lost the quality of moneys.

With regard to the "permanency" of the investment, and aside from the necessarily subjective aspects of this consideration, the Respondent submits that, under the Home Owners Loan Act, and the Regulations, an obvious—and quite adequate—apparatus for "permanent" investments is created. Indeed, it is interesting to note that, under 12 C.F.R. 541.5, *supra*, an investment interest which is to be withdrawn in less than twenty-four months is regarded as a "short-term" savings account. From this, it may be suggested that an investment interest which is not to be withdrawn within this time is to be regarded, under the Regulations, as a "long-term" or "permanent" investment.

It should be noted that the Government stresses (pp. 25-26 of its Brief) the "pertinent similarities" between an account in a savings bank and an account in a federal savings and loan association. This is achieved on the assumption—frankly set forth on page 15 (footnote 17) of the Brief—that the exemption applies to moneys in a savings account "regardless of whether the account is in a savings bank, commercial bank, or in a savings and loan association."

The Court, however, is not asked to determine whether the exemption of 38 U.S.C. Sec. 3101(a) applies to an account in a "savings bank," as distinct from an account in a federal savings and loan institution, since such an account is not before the Court, except, perhaps, gratuitously. Moreover, the assumption fails to differentiate between the various types of savings banks and savings accounts therein which, as a matter of common knowledge, are available to investors in this country.

CONCLUSION

The Respondent respectfully submits that the majority of the Court of Appeals properly found that the share interests maintained by the Committee at bar are investments and, accordingly, are not within the ambit of the exemption statute.

It is respectfully submitted that the judgment of the Court of Appeals should be affirmed.

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